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PRESENT TENDENCIES IN AMERICAN POLITICS¹

HENRY JONES FORD

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For the first time since its sessions began in 1904, the American Political Science Association was last year unable to hold its regular annual meeting. For fourteen years, in unbroken series, the association had brought its members together for conference and discussion; but last year, with more matter in its field engaging thought and provoking study than ever before, the association had to suspend its activities. This was due to circumstances so well known that the matter would be scarcely worth mentioning were it not that it exhibits a plight in which political science is apt to find itself whenever the ordinary course of events is interrupted by some great catastrophe.

In President Lowell's standard work on *Governments and Parties in Continental Europe*, he remarks that to him "the State sometimes presents itself under the figure of a stage-coach with the horses running away. On the front a number of eager men are urging the most contrary advice on the driver, whose chief object is to keep his seat; while at the back a couple of old gentlemen with spy-glasses are carefully surveying the road already traversed." In this picture, drawn by one who is himself an

¹Presidential address at the annual meeting of the American Political Science Association, Cleveland, Ohio, December 29, 1919.

eminent political scientist, no one can mistake the position assigned to political science. Its occupation is that of the old gentlemen with the spy-glasses. Carrying on the metaphor, one might say that what happened last year to prevent the usual exchange of notes and observations was an upset of the stage-coach, scattering passengers, spilling goods, and making it the first thought with everyone to jump in to save life and property. In this emergency the members of this association were not found wanting. Their ordinary pursuits as students of political science might be suspended, but not their activities as publicists, and their special knowledge and experience were applied to public service in many ways of marked usefulness. Indeed, it is the most hopeful and encouraging incident of that great wreck of civilization in which the world is now floundering that it revealed as never before the new and great resources which the state has acquired through the progress of science and the amassing of expert knowledge in our colleges and universities. Never before has the practical value of educational foundations been so impressively exhibited as by their manifold services during the great war.

But now that the war is over, or at least has dwindled so that it now continues only in particular spots; now that the main task is to clear away the wreck and put things in running order again, what help can political science give in this emergency? To begin with, it has in stock much useful information about forms of government, principles of organization, systems of jurisprudence. The old gentlemen with the spy-glasses have noted much on the road that civilization's stage-coach has already traversed. Their notes and observations have been digested in innumerable treatises. But it may be asked how much of such matter is available for instruction and guidance in the new era upon which the world has entered? For the most part the literature of political science is historical and descriptive. It gives accounts of what has been and what is; but does such knowledge throw much light on what will be? To go at once to the heart of the matter, is political science any better able now than it was in 1787 to answer the important question

which Alexander Hamilton put in the first number of *The Federalist*: "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force?" Hamilton observed that "it seems to have been reserved to the people of this country, by their conduct and example," to decide that question, so that "a wrong election of the part we shall act may deserve to be considered as the general misfortune of mankind."

There was at one period an enthusiastic belief that in the Constitution of the United States reflection and choice had at last superseded accident and force, and that a model of free government was now provided by which all countries and peoples might benefit. The effect upon governmental arrangements was once very marked, but complete examination of the documents shows that this influence soon spent itself, and a decided change of disposition took place. If, for instance, one shall attentively consider the constitutional documents of all the Americas, one will observe, that although in their early forms the Constitution of the United States was the model, this is no longer the case. The constitution of the French republic now excels it in influence. The United States has lost its lead, despite the fact that never has our country bulked larger in the world than now. The present situation is indeed a striking confirmation of Hamilton's opinion that error in our republic becomes the general misfortune of mankind, for it is a fact well known to every student of politics that a belief that our system of government is a failure on the essential point of justice is now a potent influence on the side of social revolution throughout the world. Everywhere the leaders of revolt point to the United States as an example of bourgeois rule and as an evidence of its congenital inability to deal fairly with the masses. Goldsmith's definition of a republic as a country in which the laws govern the poor and the rich govern the laws expresses a view now widely prevalent.

It is not possible that any form of government can be so good as to escape calumny or be able to rule at all times merely by reason and by moral influence; but the case becomes very serious,

the danger of revolution really formidable, when the activity of revolutionists draws support from the calm investigations of impartial students. It is unfortunately the case—and it is a fact that it would be unwise to ignore—that the most important and influential studies that have been made of the institutions of the United States show an increasing spirit of depreciation. Students of political science will generally agree that the three greatest works of this class, all displaying wide knowledge and deep thought, are De Tocqueville's *Democracy in America*, first published in 1835; Bryce's *American Commonwealth*, 1888; and Ostrogorski's *Democracy and the Organization of Political Parties*, 1902. These works form a crescendo of censure upon American government, each reëxamination of the subject confirming previous disapproval and adding to it.

Profound disappointment over results in the United States is undoubtedly a mighty factor in the strong reaction going on against representative government. It is not merely a hole-and-corner sentiment such as the police force can be trusted to suppress; it is a large movement receiving active intellectual support. Everyone who keeps in touch with current literature knows and can mention periodicals of high critical pretensions that have gone over to it. Serious and thoughtful books are appearing with arguments in favor of substitutes for representative government, and advocating new methods of political organization, which, whether that term be employed or not, are decidedly of the soviet pattern. Even such institutions as the Carnegie and Rockefeller foundations, whose origin and management would naturally incline them to conservative views, have been constrained by the results of dispassionate inquiry, to put forth severe indictments of the present system of government. The old veneration for the Constitution, that used to be such a strong American characteristic, has been much impaired.

In my own experience as a teacher—which from what I hear from colleagues is not singular in this respect—a marked change has taken place in the attitude of Young America. Most of our students seem to stick to the opinions they learned at home, in politics as in religion; but there are some ardent, hopeful, active

spirits who take an independent interest in political affairs, and these used to attach themselves with enthusiasm to the cause of civil service reform. Now, they are more likely to take up socialism, and no feature of its propaganda seems to please them more than the contempt and derision it pours upon legislative procedure. Karl Marx's scathing denunciation of what he called parliamentary cretinism is eliciting a response that can scarcely fail to have practical consequences.

This brings us face to face with a very important consideration. What is the matter with political science if it may serve to undermine institutions of government? Has it no settled criteria of political value, no methods of analysis by which it can accurately discern the causes of bad government and prescribe the means of cure? Can it, in fine, be anything more than a branch of history? Can it really maintain pretensions to rank as a genuine science of political institutions, enlightening and directing the arts of practical statesmanship?

After making all the deductions and allowances that candor requires, I think that there is good ground for the assertion that political science is not merely historical, but is a genuine science in that it can supply plain interpretation, clear foresight, and practical guidance to those who consult it. The state of political science may be fairly compared with that of medical science. The one has much the same relation to the body-politic that the other has to the physical body. The field of each science is a hunting ground for quackery and charlatanry; in the case of each the application of well-established principles is obstructed by ignorance and cupidity. But these defects in the situation do not alter the fact that a genuine body of scientific knowledge does exist, and that the real problem is not to supply knowledge but to make available the existing supply. Political science, like medicine, is a progressive science; but in each case actual attainments are immensely in advance of their practical application. The prevalence of typhoid fever and smallpox in American communities does not discredit medical science. It knows just what to do to banish such ailments if allowed to act; the difficulty is not to find out what to do, but it is to obtain means

of doing what ought to be done. Much the same may be said of political science with regard to problems in its field.

It may be laid down as a general principle that when great corrections and improvements are made in the organization of public authority they are accomplished by extending opportunity to political science. The master achievements of statesmanship when closely examined will be found to consist not in devising new principles but in providing means for making known principles available. Napoleon Bonaparte did not himself draft the code that goes by his name, but he made arrangements by which juristic reformers could apply their science to institutions. The present constitution of English city government sprang from the scientific labors of the municipal corporations commission of 1833. The present constitution of Canada sprang from the Durham report of 1839, which was an embodiment of ideas and principles of responsible government that previously had been unable to obtain authoritative expression.

To take a signal instance from our own history, exact inquiry will show that the long, miserable delay in effecting currency reform was not due to lack of scientific knowledge but to the covert legislative influence of particular interests so circumstanced as to be as naturally opposed to reform as peddlers of well water would be to the introduction of a public system of water supply. The passage of the Federal Reserve Act was notoriously the result of such a vigorous exertion of presidential influence as to secure legislative attention to scientific advice. It is, in fine, the law of political progress that sound developments are the result of administrative initiative guided by scientific knowledge. When difficult situations arise in government it generally appears that the main trouble is in the matter of power to act and not through insufficiency of knowledge. If this be true, it follows that political science ought to be able to tell what is the matter with representative government that so strong a popular reaction should be going on against it. I venture to say that political science can do that very thing.

Much obscurity still surrounds the origin and development of representative government, but its nature and requirements

are so accurately known that the cause and cure of the diseases from which it is now suffering have long since been fully stated. In proof of this I need cite only one work, John Stuart Mill's treatise on *Representative Government*. Did time permit it would be possible to show in detail how its analysis explains our present troubles, although the work was published fifty-eight years ago. But all the present occasion warrants is a brief statement of general principles.

The existence of elective assemblies does not necessarily supply representative government or even tend in that direction. It is a commonplace of history that the people of Europe were rescued from the manifold oppressions of feudalism by the development of absolute monarchy; but it is not sufficiently remarked that this was a popular process. The diets, parliaments and assemblies that abounded in the Middle Ages were regarded by the people as organs of class privilege and rapacity, and hence the people energetically supported any movement to wipe them out. Far from absolutism being the result of royal usurpation, kings were simply dragged along by the force of the movement. Powers were forced upon them that they were reluctant to accept. Striking instances of this appear when details are examined. The text has been preserved of an address made to the king of France in 1412, by a national assembly, in which profiteers were denounced, the king was blamed for inaction, and a blunt demand was made that he should seize and use absolute power. At the meeting of the States-General in 1614, the *parlement* of Paris, with the support of the Third Estate, declared it to be a fundamental law that the throne was absolutely independent, though the king himself demurred to a principle that ignored the privileges of the clergy and the nobles. When absolute power was conferred upon the king of Denmark in 1660, he at first refused to accept it, but the burghers closed the gates of the city to keep the nobles from leaving the Diet to collect their forces, and carried their point by sheer intimidation. No fact of European history is better established than that absolute monarchy was erected by public opinion and its burden of responsibility was forced upon kings by the insistence of the

people. If there is now an extensive revolt of popular sentiment against legislative assemblies, it is no new thing, but is the revival of a feeling that was for centuries the strongest political force.

At present representative government is the dominant type of polity. It has spread not only through the western world but also it has been extensively adopted in the East, whose peoples are still taking it up with an enthusiasm that creates some troublesome administrative problems for imperial authority. Today, representative government is probably the most widely diffused political form the world has ever known. If it can be made effective in distributing justice and maintaining order civilization will at last become general throughout the world, instead of subsisting only in particular areas as heretofore. The prospect is so attractive that one is apt to overlook the fact that the ascendancy of representative government is too recent to warrant entire confidence in its permanence. It is a product of the nineteenth century, prior to which representative government was peculiar to England and its offshoots. Probably English success in the Napoleonic wars was the master influence in quelling the old antipathy to legislative assemblies and starting the tide of sentiment in favor of parliamentary institutions which swept over Europe, reshaping all constitutions. But most of them do not date farther back than 1848, so that sufficient time has not elapsed to advance them beyond the experimental stage, and meanwhile it is manifest that there has been some revival of the old antipathy. The cause now is the same as the cause then—belief that institutions purporting to exist for the public welfare are really agencies of private interest and class advantage.

In such a situation, as Mill points out, "the only fruit produced by national representation is, that in addition to those who really govern, there is an assembly quartered upon the public, and no abuse in which a portion of the assembly is interested is at all likely to be removed." That is to say, representative government may assume such a character as to become wholly a nuisance, and this despite the fact that it is apparently

open to the control of public opinion through popular election of representatives. Matters may be so arranged that elections can do no more than make changes among the players in the same old game. The result then illustrates the French proverb that the more change you have the more you get of the same thing. Whichever party wins at the polls, jobbery in office and traffic in legislation will still continue. Party succession then tends to form what in European politics is known as the *Rota*, and in American politics as machine rule. The great consideration then will be not what will benefit the people, but what will please the districts, and cadging for patronage and sparring for points in the electioneering game will become the principal occupation of legislative bodies. To each party it will then appear to be the matter of greatest importance not to allow the other party credit for any achievement, and mutual rivalry in specious claims will give inexhaustible volubility and interminable duration to debate, making it a source of bewilderment rather than enlightenment.

There is no greater fallacy in government than that of electing good men to office. American experience abundantly attests the truth of Mill's observation that "unless a man is fit for the gallows, he is thought to be about as fit as other people for almost anything for which he can offer himself as a candidate." The only real security is by establishing such conditions that whoever is elected, good or bad, will have to behave himself properly. History affords no instance in which a representative assembly has been actually disposed to represent the people if the members are allowed to help themselves to offices and appropriations, and choose for themselves what business they will consider.

Mill clearly points out the serious maladies to which representative government is peculiarly susceptible, and anyone who consults his chapters on the proper functions of representative bodies, and the infirmities and dangers to which representative government is liable, will find that they accurately describe conditions from which American politics now suffer acutely. At the same time, he holds that the ideally best form of government

is representative government. How then are we to distinguish between genuine and spurious forms of representative government? The criteria he mentions may be summarized as follows:

1. There must be direct connection between the executive department and the representative assembly. The proper function of a representative assembly is to exercise control over the government in behalf of the people. It is a board of directors whose business is to keep the administration steadily confronted with its responsibilities. The directors cannot do this intelligently unless the administration is present at their meetings. Who would expect honesty and efficiency in a business corporation in which the board of directors and the executive management were separate, rival concerns, each trying to master the other, and each appealing to the shareholders against the other. Either this situation must be corrected or the business will collapse. This risk to the Constitution of the United States is distinctly pointed out in Justice Story's *Commentaries*, published in 1833.

2. The representative assembly must have no access to official patronage or to the public treasury. The members must be placed under such conditions that they will be personally disinterested in such matters. Then and then only will they act as an organ of control. It is only when representatives are so situated that they have no power to vote to their own use offices and appropriations that they will be vigilant to see that those who do make appointments and propose appropriations shall not be excessive in their demands. If, of its own motion, the executive makes all appointments without confirmation or ratification by any other authority, the representative assembly is then naturally impelled to restrict executive opportunity by economical appropriations. But if the representatives have any means of sharing the appointing power the tendency then is to multiply the offices and resist economy. How great a difference this makes may be observed by comparing the budget of any English legislative body with that of any American legislative body. In the one case the cost of a legislative session is only from five to ten per cent of what it is in the other case. It would be absurd

to impute such a constant result to personal quality of membership. It is obviously a result of system. It is just as marked in the Barbados assembly, representing an electorate in which negroes greatly outnumber the whites, as in the English house of commons.

The matter of cost is, however, trivial in comparison with the effect upon the transaction of public business. When the distribution of patronage is solely an executive function in which the representatives have no participation, a prompt consequence is clear and exact accountancy. Administrative behavior is then subjected to such jealous scrutiny that it becomes an urgent matter of administrative convenience to present budget statements with such orderly classification and in such minute detail that they speak for themselves. I do not know of any American public document that can match in lucidity and comprehensiveness the Blue Book annually laid before the Barbados assembly, which shows what good system can accomplish even under electoral conditions usually regarded as adverse to good government. This is a matter in which anyone can judge for himself who will take the trouble to examine the documents, which are to be found in a number of our public libraries.

But the effect of legislative patronage in producing loose and disorderly accounts, although a grave constitutional defect, is less serious than its effect in deteriorating legislative behavior. When members are in a position to get offices and appropriations for their districts they are, willy-nilly, forced to accept the occupation of party employment agents and district solicitors, converting legislative procedure into a scuffle of local agency, and turning representative government into a spoils system. That is the true explanation of the constitutional decay that is now manifesting itself in connection with representative government.

In addition to these criteria of genuine representative government, Mill lays down the principle that a representative assembly is by its proper nature unfit to attend to details of legislation, and that it should be restricted to acceptance or rejection of legislative projects in their entirety as prepared and submitted by the executive administration. This will be recognized as a principle

ordinarily adopted in the conduct of private business corporations. Instead of mulling over details and attempting to tinker proposals into satisfactory shape, a sensible board of directors will leave such matters to the executive management, and if it fails to give satisfaction the proper thing to do is to change the management. That some restraint upon the lawmaking activities of representative assemblies would be desirable is a thought that must often occur to one in considering the appalling volume of crude and unintelligible legislation dumped into the statute books of this country every year. Experience, however, has shown that this is a matter which takes care of itself when a genuine form of representative government is established. The situation then is such that criticism of measures becomes the most advantageous way of obtaining personal distinction, and a disposition is created in favor of putting upon the administration the work of preparing and presenting bills.

This tendency has attained its most extensive development in Switzerland where without any formal restriction of the right of individual members to introduce bills, it has become the practice to leave all bill drafting to the administration, and it has become customary for the administration to publish in advance of a session the measures it intends to submit. Should the administration fail to present a measure for which there is demand, the usual expedient is a resolution calling upon it to prepare one for consideration. Although the Swiss Congress alters and amends in its discretion, in that matter too it makes use of the administration, which retains charge of the bill and shapes its language in accord with the decisions reached. It is obvious that such a system not only precludes lobby manipulation of the terms of enactments but it also standardizes the language of the laws, making them so clear and intelligible that questions of intention and significance do not occupy the time of the courts. The community is thus spared the torment and expense which result from obscurity and inconsistency in the laws.

If these considerations are well founded, the true cause of the present discontents is not the failure of representative government but the actual lack of it. The people resent the imposture

by which constitutional sanctity is claimed for methods and practices that violate the essential character of representative government. This is an era of unrest and desire for change all over the world, but it is quite noticeable that respect for existing institutions corresponds to the actual value of their representative character. It is notorious that the spirit of revolt is less powerful in English self-governing commonwealths than it is in countries that have adopted English parliamentary institutions without the safeguard of the English budget system. It is least powerful in Switzerland where the representative system is most effectively established. It is vain to expect that the present discontents can be removed merely through sermonizing and patriotic expostulation, so long as defects are allowed which mar the representative character of the actual system of government. To those who put their trust in penal legislation and police activity, I would say with Edmund Burke: "Reflect seriously on the possible consequences of keeping in the hearts of your community a bank of discontent, every hour accumulating, upon which every company of seditious men may draw at pleasure."

REVOLUTIONARY COMMUNISM IN THE UNITED STATES

GORDON S. WATKINS

University of Illinois

On October 15, 1919, a press dispatch from Buffalo, New York, indicated that the primary election returns in that city gave an average of about three hundred votes to the three candidates whose names appeared on the ballot as representatives of the Communist party, the protagonist of the soviet form of government in the United States. The total number of votes cast was 54,000, which shows that the Communist vote was insignificant, numerically. Newspapers ridiculed the diminutive radical vote. All phenomena have a genesis, and it is the fact that a Communist ballot was cast rather than the quantitative character of the vote that has significance for the student of political philosophy and action. To those who saw the revolutionary left wing of the old Socialist party organize the Communist party and the Communist Labor party in Chicago during the first week of September, 1919, this initial appearance of the revolutionary Communists in American political life presages important developments. The event was heralded by revolutionists in this country and in Europe as the emergence of a new era in the political and economic life of the United States. The widespread dissemination of ultra-radical propaganda in connection with recent strikes is further evidence of the revolutionary purposes of Communists in America.

Optimistic prophecies are prevalent to the effect that bolshevism will find no fertile soil in the United States, since American workmen are too prosperous to become susceptible to revolutionary political and industrial philosophy. Similar predictions were voiced even on the floor of the Socialist emergency convention and the Communist Labor party convention last September.

Recent developments in American socialism throw a great deal of light on speculations of this nature. As a matter of fact the soviet form of government, with the identical *ad interim* dictatorship that obtains in Russia at the present time, is being openly advocated in the United States by the Communist party and the Communist Labor party. Both of these parties have declared adherence to the Third (Communist) International, which was convened in Moscow by Nicholai Lenin and Leon Trotzky during the early part of 1919. These groups of American communists are self-expressed supporters of Russian bolshevism, and the principles which they have formulated and are expounding vigorously would, if adopted, introduce a communist régime with all of its revolutionary implications.

An analysis of revolutionary American communism will be clearer if we review briefly the present status of American socialism and the developments that have determined this status. American socialism now comprises a moderate right wing, a vacillating center left, and an extremely radical left wing. The three divisions are officially organized into the Socialist party, the Communist Labor party, and the Communist party, respectively. It is impossible to determine accurately the numerical strength of these parties, on account of the fact that the membership of the old Socialist party has not yet settled sufficiently to warrant an official enumeration. The officials of each party, however, have ventured an estimate of the comparative strength of the three groups. Prior to the recent split in its ranks, the Socialist party had a membership of approximately 100,000. Of this number it still claims 55,000, and concedes a membership of 35,000 to the Communist party and 10,000 to the Communist Labor party.¹ The Communist party claims a membership of 60,000 and it estimates that the Socialist party and the Communist Labor party have about 25,000 and 10,000 respectively, which leaves 5000 members unaccounted for.² The estimate made by the Communist Labor party includes 30,000 members

¹ Estimate of Mr. Otto Branstetter, Executive Secretary of the Socialist party, in a letter to the writer, October 14, 1919.

² *The Communist*, September 27, 1919, p. 2.

for itself, and 25,000 for the Communist party, which leaves 45,000 still in the ranks of the Socialist party.³ It is highly probable that with the lapse of several months an official census will find about 46,000 persons in the ranks of the Socialist party, 40,000 in the Communist party, and 14,000 in the Communist Labor party, unless a merger between the last two parties is effected in the meantime, which would throw a majority of American Socialists to the surviving left wing party.

There is not space here to review in detail the causes that have produced the schism in American socialism.⁴ A brief summary of these conditions, however, is necessary to a proper understanding of the differences that obtain between the three parties. Generally speaking, the disintegration and the reconstruction in the structure of American socialism are due to the refusal of the right wing faction to abandon its program of opportunism for the ultra-revolutionary platform leading to the establishment of a proletarian dictatorship which was demanded by the left wing of the old Socialist party. This irreparable breach in American socialism is the logical sequence of a similar crisis, disruption, and reconstruction in European socialism, in which the moderates still adhere to the Second International while the revolutionists accept the leadership of Lenin and Trotzky within the Third (Moscow) International.

Like its European contemporaries American socialism even before the world war was experiencing unprecedented disaffection among its adherents, and this discontent has gained momentum during the subsequent years. Naturally enough, the foreign-language federations of the old Socialist party were most largely responsible for the development of dissatisfaction with the party's program of opportunism. Pronounced revolutionary tendencies at the St. Louis Convention of the Socialist party in April, 1917, forced the adoption of a militant declaration against the war, and led to the arrest of the party's leaders. Increasing impatience on the part of the revolutionary membership and

³ *The Communist Labor Party News*, September, 1919, p. 1.

⁴ See an article by the writer on "The Present Status of Socialism in the United States," *Atlantic Monthly*, Vol. 124, No. 6 (December, 1919), pp. 821-830.

its enthusiasm for the Bolshevik Revolution in Russia led to the organization of a Communist Propaganda League in Chicago, on November 7, 1918. There soon followed general agitation for the adoption of a revolutionary Communist program of action, emphasizing the necessity of a radical reconstruction in the thought and practices of American socialism. The left wing section of the Socialist party was organized in New York City early in 1919; and immediately the Lettish, Russian, Lithuanian, Polish, Ukrainian, South Slavic, Hungarian, and Esthonian federations of the Socialist party, representing about 25,000 members, declared their adherence to the program of the left wing faction: Thus far no general movement for secession from the Socialist party had appeared; but the opposition had developed remarkable strength, electing 12 out of 15 members of the national executive committee at the party election. The election, however, was declared fraudulent by the old national executive committee, and the latter decided to remain in office until the emergency convention, called for August 30, 1919, although its term of office should have expired on June 30.⁵ This action of the committee, together with its suspension of the foreign language federations, stimulated the opposition of the left wing.

Local Boston, Local Cleveland, and the left wing section of the Socialist party of New York City issued a call for a national left wing conference, which convened in New York City on June 21, 1919. Ninety-four delegates representing twenty states, and chosen especially from large industrial centers, "the heart of the militant proletarian movement," attended this assembly. At the outset of this conference there developed a difference of opinion on the alternatives of organizing immediately a new party devoted to the revolutionary class struggle or of continuing the fight for control of the old Socialist party, at least until the emergency convention. The proposal to organize at once a new party was defeated by a vote of 55 to 38, whereupon 31 delegates, representing for the most part the Russian federations,

⁵ Report of Louis C. Fraina, international secretary of the Communist party of America, to the executive Committee of the Communist International. *The Communist*, October 11, 1919.

decided to withdraw. Later this minority of thirty-one issued a call for a convention to open in Chicago on September 1, for the purpose of organizing the new party, thus repudiating all participation in the Socialist emergency convention. The majority delegates at the left wing conference adopted a program to gain control of the old party, and to assure the success of this program a national left wing council was elected to combat the reactionary right wing faction.

By August 1, the national left wing council was convinced that the majority of the membership represented at the left wing conference had repudiated the action of the majority delegates and had indorsed the proposal for the organization of a new party. Consequently, the left wing council joined the organizing committee, elected by the minority delegates, in issuing a call for a convention to organize a Communist party. Out of this convention, held in Chicago during the first week of September, 1919, emerged the Communist party of America, with the dual purpose of waging war against reactionary socialism and against capitalism. Meanwhile, the left wing executive committee of the Socialist party, elected by the revolutionary faction, was denied recognition and office by the old national executive committee. The left wing forces, however, continued their struggle for party control, and carried hostilities to the floor of the emergency convention. There the superior parliamentary tactics of the right wing leaders spelled defeat for the revolutionists, whereupon the latter, led by John Reed, John Carney, and William Bross Lloyd, convoked a separate convention in the I. W. W. hall and organized, on August 31, the Communist Labor party of America.

The emergency convention of the Socialist party did not indorse the Communist International, but submitted the question of indorsement to the membership through referendum, while both of the Communist conventions accepted without qualification the pronouncements of the Communist International and formulated their programs and platforms with Russian bolshevism as the major inspiration. It should be noted here that although the Communists in the United States are divided into two distinct parties and present center left and extreme left factions,

there is a probability that a process of amalgamation will take place sooner or later, which will leave American socialism with but two major parties—the Socialist party on the right and the Communist party on the left. If this consolidation does take place the Communist Labor party, being the weaker of the communist groups, will doubtless become extinct. Thus far extensive negotiations seeking a merger of these two Communist parties have failed on account of the unwillingness of both to effect a compromise on the question of party control and the absence of an acceptable basis of fusion. The rank and file—the unknown quantity in the present reconstruction of American socialism—may soon accomplish what the officials of the two parties have failed to do.

This survey of the conditions that have necessitated a reconstruction in American socialism suggests that there is a fundamental basis of disagreement between the Socialists and the Communists. This fundamental difference is that the Socialists, represented in the Socialist party, accept parliamentary action as an effective and desirable means of overthrowing capitalism and introducing the socialist state; while the Communists, represented in the two Communist parties, oppose parliamentary participation except for purposes of propaganda, and advocate the revolutionary extermination of capitalism as the initial step in establishing a dictatorship of the proletariat, preceding the organization of the communist society. The program of the Socialist party, therefore, is moderate and opportunistic, while the program of the revolutionary Communist parties is ultra-radical, deprecating all compromise with existing political and economic institutions and rejecting parliamentary reform as a means of revolutionizing the social order. Between moderate socialism and revolutionary communism there is no basis for compromise and coöperation.⁶ Revisionist and reformist socialism organized within the Second International is condemned as counter-revolutionary in philosophy and action, a betrayer of proletarian interests and the prophet of reactionary state capitalism. State

⁶ *The Communist*, September 27, 1919, pp. 1, 6; *The Communist Labor Party News*, September, 1919, p. 1.

capitalism, precisely that type of state capitalism advocated by moderate socialism, is viewed by the Communists as the highest expression of imperialism and as designed to buttress capitalism in further exploitation of the proletariat. Germany is the Communists' example *par excellence* of what might be expected under state capitalism. Moderate socialism proffers a capitalist parliamentary republic and not a proletarian dictatorship.⁷ Revolutionary communism and reformist socialism, therefore, hold different conceptions of the state; the former adheres to the theory that there must be a revolutionary demolition of the capitalist state and organization of a new state under proletarian domination; the latter accepts the bourgeois parliamentary state as the basis for the evolutionary transition from capitalism to socialism.

American communism, like Russian bolshevism, its major inspiration, is an attempt to return to pure Marxism and to obliterate every vestige of pseudo-Marxism represented in opportunistic socialism. In speaking with the leaders and the rank and file of American Communists one is impressed with their strong desire to return to the first principles of communism as enunciated in the manifesto of 1848; and communist literature is replete with orthodox interpretations of the revolutionary class struggle, the materialistic conception of history, the theory of surplus value, and the law of the concentration of capital. Moderate socialism both in Europe and in America have wandered far afield from these fundamental articles of communist faith; and American communists, accepting the challenge of what they believe to be the new era of proletarian dictatorship, are organizing their forces after the manner of their Russian comrades with a view to reconstructing the whole socialist movement on the basis of unadulterated Marxism. One need but examine the manifestoes and programs of the Communist parties to grasp the significance and determination of this purpose.

The program of revolutionary communism in the United States may be summarized briefly as follows: (1) complete disruption

⁷ Manifesto of the Communist Party, *The Communist*, September, 1919, pp. 6-8.

of the capitalist state and the elimination of every vestige of bourgeois parliaments; (2) organization of a dictatorship of the proletariat as the initial step in the communist reconstruction of the social order, subsequent to the anticipated successful social revolution; (3) participation in political campaigns under capitalism to be of secondary importance, devoted only to the task of disseminating communist propaganda against the bourgeois state; (4) nominations for public office and participation in elections to be limited to legislative bodies, as municipal councils, state legislatures, and Congress; (5) representatives of American communism in these assemblies not to introduce or support political and social reform measures, but to use their parliamentary powers and privileges in exposing capitalistic oppression of the proletariat; (6) absolute maintenance of the revolutionary class struggle and no compromise or coöperation with political groups not committed definitely and openly to that struggle, as the Socialist party, Labor parties, the Non-Partisan League, and municipal ownership leagues; (7) major activities of the Communist parties to be carried on in the industrial struggles in order to develop a general understanding of the strike in relation to the final overthrow of capitalism, that is, to emphasize the revolutionary implications of the mass strike rather than the immediate purposes of the local walkout; (8) trade-unions to be revolutionized and industrial unionism to be advocated as against the reactionary craft unionism of the American Federation of Labor; (9) coöperation with the revolutionary proletariat of the world to be encouraged, in order to guarantee the success of the Communist International and pave the way for the introduction of world communism comprised of free, coöordinated, coöperating communist societies.⁸

The program of revolutionary communism in the United States is similar to the program of Russian bolshevism, namely, complete disruption of the capitalist state, oppression and expropriation of the bourgeoisie, the organization of a proletarian dicta-

⁸ The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9; The Program and Platform of the Communist Labor Party, *The Communist Labor Party News*, September, 1919, p. 2.

torship and, eventually, the reconstruction of the social order upon a communistic basis. The immediate objective of the Communist attack is the political and economic foundations of the present society. In the Communist program there is no provision for a temporizing compromise with the institutions that constitute the major defenses of capitalism, such as private property, the wage system, the courts, and the parliamentary structure. There is to be no gradual growing into socialism. Evolutionary development has no place in communist parlance; revolutionary extirpation of all those institutions the continued existence of which might facilitate counter-revolutionary movements is the strategy *par excellence* of communism. "The immediate objective of the proletarian revolution is the conquest of the power of the state; and this means the annihilation of the bourgeois state, its parliamentary system and bourgeois democracy, and the introduction of a new 'state' comprised in the dictatorship of the proletariat," states the international secretary of the Communist party of America.⁹

The proletarian struggle, then, is essentially a political struggle. It is political in the sense that its objective is political—the annihilation of all parliamentary defenses of capitalist power, and the substitution therefor of a proletarian commonwealth. It cannot be emphasized too strongly that communism does not propose to "capture" the bourgeois parliamentary machinery, as does moderate socialism, but rather to conquer and destroy it completely, for "As long as the bourgeois state prevails, the capitalist class can baffle the will of the proletariat."¹⁰ This immediate aim of American communism is identical with that executed by Lenin and Trotzky in the Bolshevik Revolution, and is believed to be a tactical necessity in disposing of the old social structure and defending the communist order in its germinal period.

For the realization of their immediate purposes the Communists have outlined a specific program of action. There is to be,

⁹ Fraina, Louis C. *Revolutionary Socialism—A Study in Socialist Reconstruction*, p. 213.

¹⁰ Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 7.

first, the development of a general political strike in which elections will be boycotted, as they were in Russia by the Bolsheviks in the elections for the Second Duma in 1906, and, second, the germination of mass action through the general strike. The method of the Communist attack, therefore, is to be both economic and political. The nature of the political boycott is not at all clear from statements issued by the Communist parties. From the expressions on the convention floor it seems that the political strike is to consist in nonparticipation in elections, which is to serve the purpose of a silent proletarian taboo of the parliamentary régime of capitalism and to emphasize the irreconcilability and incompatibility of bourgeois and proletarian interests. The pronouncements of the Communist groups—the manifestoes, platforms, and constitutions—do not contain provision for such a boycott of elections and do not, moreover, preclude election to public office.

Although the Communists emphasize the fact that not one of the great teachers of scientific socialism has taught the possibility of social revolution through the use of the ballot, they do not ignore entirely the value of voting, or the election of revolutionists to public office, provided these achieve beneficial results for the workers in their great economic struggle. Cognizance is taken of the fact that political campaigns and the election of party representatives to seats in parliamentary bodies provide opportunities for exposing capitalist democracy, educating the workers to a realization of their class interests, and demonstrating the necessity of overthrowing the existing régime. The Communist parties entertain no hope of achieving their purposes at the polls, and warn their adherents against placing confidence in legislative reforms under capitalism.

There is nothing in the program of the Communist Labor party that would prohibit its parliamentary representatives from introducing and supporting legislative measures in the interest of the workers, and on the whole the party appears not adverse to reformatory statutes of any character, provided these advance the proletarian conquest of the state.¹¹ The Communist party is

¹¹ Program of the Communist Labor Party, *The Communist Labor Party News*, October, 1919, p. 2.

less vacillating and opportunistic, for its program provides that (1) participation in parliamentary campaigns is of secondary importance, to be used only for the purpose of revolutionary propaganda; (2) parliamentary representatives of the party shall not introduce or support reform measures; (3) Communist representatives shall use the parliamentary forum to interpret and emphasize the revolutionary implications of the class struggle, to expose the oppressive class character of the capitalist state, and to show that parliamentarism and bourgeois democracy deceive the workers with reform palliatives.¹² In order to concentrate its political activity and to prevent degeneration of parliamentary action into reformism, the Communist party limits nominations for public office to legislative bodies, including municipal councils, state legislatures, and the national Congress. For the same reasons the party prohibits coöperation with organizations not committed to the revolutionary class struggle.¹³ A similar position in regard to such coöperation is taken by the Communist Labor party.¹⁴

In relegating legislative reforms to a position of minor importance or completely ignoring such measures, American communism differs from other reform movements, including moderate socialism. For this reason its program is not likely to prove attractive to practically minded American workmen. From parliamentarism the Communist turns to mass action as the most effective means of expediting the social revolution, which he declares to be inevitable. If the immediate aim of communism is political in character, its method of achievement is both political and economic. Politico-economic mass action is the *sine qua non* of the social revolution. According to the Communist analysis of historical developments, isolated economic action in the form of craft unions and sporadic strikes, and parliamentary action in the bourgeois assemblies, have proved futile when viewed from the standpoint of the revolutionary class struggle. The new phase into which the class struggle is just entering necessitates

¹² The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9.

¹³ *Ibid.*

¹⁴ *The Communist Labor Party News*, October, 1919, p. 2.

the unification of industrial and political action as a determinant of successful proletarian conquest of political power.¹⁵ As a matter of fact, however, the mass action of American communism is more industrial than political in character.

For the propagation of mass action through the general strike revolutionary communism has a definite policy. Since the ultimate aim of communism is the organization of a workers' industrial republic, the logical channel of approach is through the united action of the industrial and agricultural proletariat. Consequently, communism is conveying to these workers the message effectively enunciated by Marx and Lenin, namely, that capitalism expropriates the proletariat, the difference between wages and product constituting the unearned profits of the capitalists. This surplus value attributed to the efforts of labor must, therefore, become the property of the workers. The differential of production can be regained through mass action in seizing the machinery of industry and appropriating it for the workers. To attain this end the industrial strike must cease to be isolated and passive and become positive, general, and aggressive, preparing the workers for the assumption of industrial administration.

The mass strike is possible only under a synthetic organization of the workers in the basic industries. Recognition of this fact has led revolutionary communism to denounce conservative craft unionism represented in the American Federation of Labor, which it characterizes as a shackle upon the militant movement of the American proletariat, because of its tendency to divide the workers into disintegrated fragments under a reactionary bureaucracy. To the Communist the most vital and promising fact in American trade-unionism is the attempt of the membership to break the rule of conservative officials, and to develop a type of industrial unionism that will respond sympathetically and spontaneously to the revolutionary impulse of the workers. If the Communists' analysis is correct, disintegrated craft unionism is destined to be superseded by industrial unionism, just as moder-

¹⁵ Fraina, *op. cit.*, pp: 178, 179.

ate socialism is giving place to revolutionary communism. Thus unionism will become an agency for militant action in the aggressive struggle of the proletariat against capitalism, and industrial union organization, divorced from the methods and policies of autonomous craft unions and "inspired with the revolutionary purpose, becomes a vital factor in the proletarian revolution."¹⁶

Industrial unionism develops its real power among the unskilled workers who, untrammelled by obstructions of craft differentiation and stratification and welded into a common mold by machine industry, possess a clear conception of group interests and cultivate the *esprit de corps* of the industrial proletariat. It is this industrial "consciousness of kind," this vigorous sense of common interests, that makes industrial unionism, structurally and functionally, the peculiar unionism of the unskilled workers. American communism has ingeniously sensed this peculiar psychology of the untrained mass.¹⁷ The Communists, however, find limitations even in industrial unionism, on account of the impossibility of organizing the whole working class into industrial unions under the capitalistic régime, and they contend that to achieve the social revolution it will be necessary to enlist the workers, organized and unorganized, by means of revolutionary mass action.¹⁸ Nevertheless, industrial union organization is to be effected whenever and wherever possible, and the general strike is to be generated; for as strikes become general they "acquire political significance, action becomes the action of the mass, the integrated action of an integrated proletariat."¹⁹

To marshal the forces of the militant masses, American communism has determined to function through local and district units of the two parties assigned to the task of establishing intimate contact with the workers in the mills, workshops, and mines. It is the business of these party units to initiate and support

¹⁶ *The Communist*, September 27, 1919, p. 2.

¹⁷ Cf. *The Programs, Platforms, and Manifestoes of the Communist Parties, and Revolutionary Socialism—A Study in Socialist Reconstruction*, by Louis C. Fraina.

¹⁸ Manifesto, Program, Constitution, etc., of the Communist Party, 1919, p. 12.

¹⁹ Fraina, *op. cit.*, p. 187.

plans for the organization of labor along the lines of the shop steward and shop committee movement in England. Moreover, Communist propagandists are to encourage the organization of these shop committees into industrial councils, district councils, and a central council of all industries, as proposed under the Whitley Plan.²⁰ These committees and councils afford an effective medium for the dissemination of Communist doctrines, and suggest the practicability of the administration of industry by the workers. Paradoxical as it may seem, many employers, both in Europe and in the United States, have inaugurated similar schemes of shop committees and industrial councils with the hope of satisfying the workers' demand for industrial democracy and preventing the spread of Communist philosophy. There is little doubt, also, that industrial councils have been introduced to "break the back of trade-unionism," precisely what the revolutionary Communist hopes will be achieved.

The organization of a general type of industrial unionism embracing the Industrial Workers of the World, the Workers' International Industrial Union, independent and secession unions, militant unions of the American Federation of Labor, and the unorganized workers, becomes the major task of American communism for two reasons. First, because this type of proletarian organization makes possible the mass strike, with its revolutionary implications, constantly suggesting the feasibility of the conquest of capitalistic political power;²¹ and, second, because industrial unionism, organizing the workers by industries, becomes potentially, if not actually, the fundamental basis of the new communist society, together with other administrative agencies necessary to correlate the nonindustrial functions of the new régime.²² "After the conquest of power the industrial unions may become the starting point of the communist reconstruction of society."²³

²⁰ Special Report on Labor Organization, *The Communist Labor Party News*, October, 1919, p. 2; The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9.

²¹ Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 8.

²² Cf. Fraina, op. cit., p. 220.

²³ Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 8.

The social revolution, which communism predicts will come through mass action generated in the industries, and which is to assume political character and significance, will introduce the dictatorship of the proletariat as it did in Russia. American Communists entertain no hope of immediate revolution; it may be a decade away, but it is inevitable. Their present task, therefore, is to prepare the workers for the administration of the state and industry during the approaching cataclysm, which will come at a moment of utter collapse of the old structure of society. Communism teaches no obedience to the blind fatalism of what it terms pseudo-Marxism, but purposive and conscious action in the interest of proletarian triumph. The creation of mass action is all important in the immediate policies of communism. "Under the impulse of the crisis, the proletariat acts for the conquest of power, by means of mass action. Mass action concentrates and mobilizes the forces of the proletariat, organized and unorganized; it acts equally against the bourgeois state and the conservative organizations of the working class."²⁴ To the communist philosopher the vital facts of industrial evolution are the concentration of the machinery of production in the hands of a few, the increasing tendency toward combinations and trusts, and the leveling down of all workers to the ranks of the unskilled. To these facts the unskilled proletariat—the hope of communism—is expected to respond through mass action for the appropriation of political power and the organization of the proletarian dictatorship.

The dictatorship of the proletariat is a recognition of the fact that in the communist reconstruction of society the proletariat alone counts as a class.²⁵ This dictatorship, however, is designed not only to perform the negative task of crushing the old order of capitalism, but also the work of constructing a new society which is to function not in the government of persons but in the management of production and distribution. The proletarian dictatorship is viewed by the Communist as a necessary but temporary expedient in effecting the transition from capitalism to

²⁴ *Ibid.*

²⁵ *Ibid.*

communism. Out of the disorder and chaos of the disrupted capitalist régime the revolutionists believe there will arise the complete structure of a new social order of communist socialism—industrial self-government of the communistically organized producers. When this structure is perfected, which implies absolute economic and political expropriation of the bourgeoisie, the dictatorship is to end. To understand the Communists' justification of this ruthless *ad interim* dictatorship one must recall that to them the state is a symbol of intimidation and coercion, functioning always in the interest of the ruling class. Thus, with the conquest of political power by the workers who become the dominant authority, political rights and recognition are denied the bourgeois class.²⁶ During the transition from capitalism to communism, therefore, democratic government as it is generally interpreted cannot obtain; rather must there be a proletarian autocracy.

All this prompts the query: who constitutes the proletarian class? The term proletariat as used by the Communists refers to that class of persons which is dependent for its livelihood upon selling its labor power to the owners of industry.²⁷ The professional and skilled classes receive little consideration, and are very likely classified with the *petite bourgeoisie*. It is the unskilled who are the real proletariat in Communist terminology, for the skilled and professional groups think in terms of their craft, of individuals and their property, while the unskilled—the standardized product of modern industry—think in terms of the mass. "The Social Revolution can be carried through only by the industrial proletariat of unskilled labor, in spite of and acting against all the ideas and activity of *all other social groups*."²⁸ And again, "The machine proletariat of average unskilled labor constitutes the typical proletariat in the Marxian sense," and "constitutes the material basis of Socialism."²⁹ Marx and Engels, it will be recalled,

²⁶ Fraina, op. cit., pp. 214, 217.

²⁷ Mr. C. E. Ruthenberg, Executive Secretary of the Communist Party, in a letter to the writer, November 20, 1919.

²⁸ Fraina, op. cit., p. 137. The italics are ours.

²⁹ Fraina, op. cit., p. 143.

thought of the proletariat as the class of modern wage-laborers who, having no means of production of their own, are reduced to selling their labor-power in order to live.³⁰ As the American Communists interpret the term "wage-laborers," it applies evidently only to the unskilled in industries and agriculture.

Beyond the period of the proletarian dictatorship the program of American communism does not provide a definite form of social structure. Not an outline of the future society, but a program of action is the present purpose of communism. To attempt to describe the structural and functional aspects of the new social order, other than those indicated in the form of organization created to wage the class struggle, would be utopian, say the Communists. It is expected that the framework of the new society will be made during the transition, under the surveillance of the ruling proletarians. The norms of the communist order will evolve in this period. At first industrial administration will function through general organizations known as councils of workers. These administrative units are to be integrated and adapted to industrial divisions. It is at this juncture that industrial unionism is to function, becoming the basis of the new communist society, together with such other administrative agencies as may prove necessary to coordinate the nonindustrial activities of the people. "Each industry will constitute a department of the industrial state; the workers in each industry will organize in local councils and these unite into general industrial councils coordinated with other general industrial councils into a central administration of the whole productive process."³¹ The function of the central administration is to be directive, not repressive; positive, not negative, coordinating and guiding the machinery of production and distribution. The distribution of the product is to be determined ultimately on a purely communistic basis: *from each individual according to his ability, to each according to his needs.*³²

³⁰ *The Communist Manifesto*, translation by Mr. Samuel Moore, p. 12.

³¹ Fraina, *op. cit.*, p. 220.

³² Cf. *Ibid.*

This is identical with the program of Russian bolshevism. The Bolsheviks, it will be remembered, have two general forms of organization: the All-Russian Council of soviets with its executive committee and people's commissars, and the Supreme Council or commissariat of public economy. The functions of the former are political in their character, constituting the political government of Bolshevik Russia during the period of reconstruction. Police powers to preserve order within, control of the army and navy to protect the soviet republic from external and internal enemies, administration of the foreign affairs of the commune, and the adjudication of appeals in industrial matters, are some of the functions performed by the soviet administrative units, coördinated in the All-Russian Council. With the defeat of the enemies of the commune and the completion of the socializing process this political machinery will cease to function. The Supreme Council of Public Economy administers the industrial affairs, such as determination of wages, apportionment of output, distribution of rations, insurance and relief of workers, technical education, and recreation.

As in Russia, the proletarian dictatorship devised by American communism is to be a temporary makeshift created to dispose of counter-revolutionary movements. As the political machinery of the *ad interim* period completes its work, that is, when the opposition of the bourgeoisie is broken, the dictatorship of the proletariat will disappear and with it the political state and all its class distinctions. The basis of the communist society will be industrial, not territorial, and its constituents, therefore, will be the organized producers. The other elements of the population—the *petite bourgeoisie*—will participate and function in this new proletarian order only as they are absorbed into the industrial structure and become useful producers.³³ The communist society, it is contended, will be undemocratic only to those who are not proletarians. Within the communist structure itself all are to become proletarians and productive labor will be the basis of franchise.

³³ Fraina, *op. cit.*, p. 217.

The philosophy and program of American communism invites adverse criticism at several points. First, its disregard of parliamentary action and its opposition to legislative reforms are unfounded denials of the efficacy of the ballot in improving the status of the workers and other classes in society. It is conceded that social reform has failed to usher in a proletarian millennium, but this does not constitute proof of the futility of legislative reforms. The history of social legislation is replete with splendid achievements of parliamentary action in behalf of the workers. Communism's rejection of pragmatic opportunism seems unwise in a country like the United States, where with effective political organization much can be done to defend the interests of the so-called proletariat.

In the second place, the egalitarian philosophy, out of which springs the dictum "from each person according to his ability, and to each according to his needs," has never been generally accepted as practicable, and its adoption in this country is very unlikely. A system of "distributive justice" that is based upon needs rather than upon contributive effort is to many persons not justice at all, but expropriation of the industrious and efficient for the benefit of the inefficient and indolent. Such a system of distribution would very likely destroy the initiative and enterprise that have constituted the potent forces in social progress.

Third, it is difficult to justify, even as a temporary expedient, the autocratic proletarian dictatorship by a revolutionary minority who, during the transition from capitalism to communism, are to deny all rights and privileges to the other classes of society and permanently expropriate them. The refusal to permit the organization of a constituent assembly to determine the structural and functional aspects of the new society is the antithesis of the Anglo-Saxon concept of democracy.

Finally, the abolition of the political state seems a presumption in favor of anarchism. To abolish parliamentary government of persons and establish in its stead a management of industrial processes presumes that the production and distribution of wealth are entirely divorcible from persons as producers and distribu-

tors. Unless the human factor in these processes can be standardized to react altruistically, authority must be delegated to some person or body of persons to compel obedience, or else order will be replaced by chaos and anarchy. Anarchism is the negation of all authority, whether political, economic, or religious; communism accepts unlimited state power and authority during the transition from capitalism to communism, beyond which all government of persons is to cease.³⁴ If in their future society the Communists propose to continue the industrial councils of the transition period, it is difficult to see how there can be government of things apart from government of persons. Moreover, should the Communists, during their reconstruction of society, find that the continuation of political councils like the soviets is a prerequisite to order and progress, it is highly probable that these councils would be no more democratic and truly representative of the entire population than political caucuses and legislative committees have been under the present system. Delegated authority, under communism, which would seem imperative for the maintenance of order, would doubtless be open to the same danger of abuses of power as now obtains under their arch enemy—"Capitalistic Parliamentarism."

Despite the destructive character of its program, the uncertainty and vagueness of its plans for the future social order, and the unsoundness of many of its doctrines, American communism is gaining a large following among the industrial workers and promises to become an important influence in our political and economic life. For these reasons it commands the thoughtful consideration of every student of political and economic philosophy.

³⁴ Cf. "The Russian Revolution," by N. Lenin, *The New International*, June 30, 1917, and *Revolutionary Socialism—A Study in Socialist Reconstruction*, by Louis C. Fraina.

THE NEW GERMAN CONSTITUTION

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To understand the real nature of the government which now, under its new constitution, is attempting to guide the German nation through the perils of reconstruction is indeed a baffling problem. We are as yet too close to the events which brought it into existence and clothed it with constitutional forms to attempt their evaluation or to determine their significance. The revolution was so unlike what we should have expected as necessary to shift the ultimate power in the state from a narrow military and landed oligarchy to the masses of the people, that a doubt forces itself upon us as to its genuineness. The war, with its shattering of national ideals, its appalling toll of life, the grinding misery which it imposed, and the insuperable financial bondage to which it condemned the nation for an indefinite future, might account for a thorough popular disillusionment which would sweep the nation into the current of democracy. But if this were the case, we would expect a general enthusiasm for the new government, an evident popular sense of the passing of the dark night of autocratic rule and a joy in the light of a new and happier day.

This is exactly what does not exist. There are three classes in Germany today. The first, who constitute only a small minority, are the nationalists and militarists who are bitterly opposed to the republic, and even now are agitating at every favorable opportunity for the restoration of the monarchy in its old form. The second class are likewise a comparatively small minority. They are the revolutionaries, the Spartacists with some of the Independent Socialists, who are just as strongly opposed to the government, using wherever possible the instruments of direct action to inaugurate the revolution which they

believe has not yet been achieved. The vast mass of the nation appear to be utterly indifferent with respect to forms of government. Any régime which makes life easier, gives them something to eat and protects them from civil war, commands their temporary support. They are essentially opportunists awaiting the turn of events. Of real adherents on principle to republican, parliamentary, genuinely democratic government, there appear to be very few in Germany today. It is upon this uncertain and precarious basis of public opinion that the existing German government has been created and is maintained.

The revolution in Germany falls thus far into four phases: The first covers the period from October 3, 1918, when Prince Maximilian of Baden was appointed to the chancellorship, to November 9, when the Kaiser abdicated and the provisional government under the chancellorship of Friedrich Ebert was established. Decisive military defeat made it evident that the war was approaching a speedy and disastrous conclusion. A desperate effort was, therefore, made to introduce such liberal measures as would satisfy the demands of the allied powers and conciliate the widespread revolutionary forces in the nation. For the first time in the history of the empire several Socialists were included in the government. Reforms which progressives had been demanding in vain for decades were now instituted over night, and in form the German constitution became as liberal as England's. It was, however, too evidently a deathbed repentance, and as such it came too late. This phase may be called the bourgeois revolution.

A second phase is that of the provisional government under Ebert as chancellor, which extends from November 9, 1918, to the convening of the National Assembly on February 6, 1919. The government was in the hands of the majority Socialists, though there was little change in the personnel of the higher administrative posts. Under the law of November 30, which provided for universal manhood and womanhood suffrage and proportional representation, elections were held for the National Assembly. The government, recognizing its provisional character, and that it possessed no mandate from the people, under-

took merely to hold things together until the assembly should convene.

The third phase extends from the meeting of the assembly to the promulgation of the constitution on August 13. The Assembly at once adopted a provisional constitution, under which Ebert was chosen President of the Republic, and, in turn, appointed Philip Scheidemann chancellor. A ministry made up, with one exception, of majority Socialists and Centrists, was organized, and the government assumed a more regular and legal character. Supported by a substantial majority in the National Assembly, it was now able to take a more positive and constructive attitude toward the problems of reconstruction which were pressing for solution. Scheidemann, who opposed the acceptance of the terms of peace offered by the allies, was forced to retire on June 20, and a new ministry under Gustav Bauer was installed. This change, however, in no wise affected the general character of the government which continued to rest upon the support of the majority Socialist-Centrist coalition in the National Assembly.

With the promulgation of the constitution on August 13, the present phase of the revolution in Germany was ushered in. Ebert took the oath of office under the new and definitive constitution as President of the Republic, and the Bauer ministry was continued. No change in policy or personnel was occasioned by the putting into force of the new fundamental law. The National Assembly, which had thus far functioned as a constituent body, now assumed the rôle of the regular Reichstag. What had previously been provisional now became in every respect regular and legal.¹

Interesting comparisons might be drawn, did space suffice, between the National Assembly which has framed the present constitution of Germany and other constituent bodies. So far as we can judge from the meager reports which have reached us of its deliberations, it was not marked by the lofty ideals, the

¹The new constitution was discussed on first reading late in February and early in March, in commission from March to June, on second and third reading from July 3 to 31, and was adopted by a vote of 262 to 75.

elevated conceptions, the ardent enthusiasm, which characterized the French national assembly of 1789, and even the Frankfort parliament of 1848. Nor is there evidence of the masterly statesmanship which was so signally displayed by the American constitutional convention of 1787. One figure alone stands out prominently, that of Professor Hugo Preuss, whose individual work the constitution is supposed in large measure to represent. The membership of the assembly was chiefly composed of men who had served in the old Reichstag, politicians of very ordinary and mediocre ability. Nor was the assembly guided or inspired in its work by any general popular discussion. It confronted throughout its deliberations a persistent and deadly indifference on the part of the press and the people. Convened at the quiet little town of Weimar instead of Berlin, in order to remove it from the scene of Spartacist activities, it attracted little attention. Public opinion was concentrated on the questions connected with the peace treaty, the problems of public finance and reconstruction, and the machinations of the monarchical and Spartacist factions. To the work of determining the new framework of government, no one gave special thought.

Under these circumstances it is rather remarkable that so satisfactory an instrument should have been produced. It is in many respects crude; it lacks the polish and form which we generally expect to discover in a national constitution. It shares the fault of many modern constitutions in being too long, and in incorporating too many detailed provisions on relatively unimportant matters. At the same time it leaves many important matters to be determined by subsequent organic laws, which it provides shall be enacted. It contains a considerable number of general statements of fact as well as some doctrinaire and ideological principles. It is in some particulars ambiguous. And it is burdened with a large number of temporary provisions. Nevertheless, when full account is taken of all its defects, it still appears to be a practicable and fairly satisfactory instrument of government.²

² The Constitution, translated by Professors W. B. Munro and A. N. Holcombe of Harvard University, has been published by the World Peace Foundation, Boston, Mass., and can be obtained on application.

The constitution contains a preamble and 181 articles. It is broadly divided into three parts: *first*, composition and functions of government; *second*, fundamental rights and duties of Germans; *third*, transitory and final regulations. Under composition and functions of government, there are seven subdivisions, as follows: the national government (*Reich*)³ and the states; the Reichstag; the President of the Republic and the ministry; the Reichsrath; national legislation; national administration; and the administration of justice. The part dealing with the fundamental rights and duties of Germans falls into divisions on the individual; the social life; religion and religious societies; education and the schools; and the economic life.

The preamble states that "The German people, united in all their branches and inspired by the determination to renew and strengthen their domain in liberty and justice, to preserve peace, both at home and abroad, and to foster social progress, has adopted the following constitution." The principle of popular sovereignty is further emphasized in Article 1, which states that "The German nation (*Reich*) is a republic," and that "Political authority is derived from the people." The constitution was, however, not submitted to a popular referendum for ratification. The territory is stated to consist of the territories of the German states. Annexation of other territory may be effected "by a national law, if their inhabitants, exercising the right of self-determination, shall so desire."

The legislative competence of the national government is determined in a long enumeration of powers. It is considerably more extensive than that exercised by the imperial government under the old constitution. The special rights of the south German states are swept away. Such matters as the relations

³ There is an obvious difficulty in the translation of the German word *Reich*, which is repeatedly used in the new constitution. Its former significance as "Empire" is confusing. To speak of the national republican government of Germany as an empire would give this term a meaning which it has hitherto not carried in English. The terms "domain," "nation" and "national government" have been used as equivalents. The term "commonwealth" has also been suggested, as expressing very nearly the idea which the German word *Reich* embodies.

of church and state, land tenure, theaters and cinematographs, disposal of the dead, and the general control over public instruction are now placed within the field of national legislation. The national government, moreover, is given an unlimited power of taxation and thus freed from the necessity of relying upon matricular contributions from the states. There is thus exemplified the centripetal and unitary tendency so noticeable in all federal governments. The states enjoy the right of legislation in many of the matters included in the enumeration of national powers, so long as the national government does not exercise them, but such state laws are subject to a federal veto. The administration of national laws is generally left in the hands of state officials, as under the old constitution. A republican form of government must exist in every state, the people's representatives being chosen by universal, equal, direct, and secret vote cast by all German citizens, men and women, on the basis of proportional representation. The same system must also be employed in connection with all local elections. Ministerial responsibility to the representative body is also made a fundamental principle of every state government.

A change in the boundaries of states can be effected by ordinary national legislation, when the states directly concerned agree, or when the population affected demands it by referendum and a predominantly national interest requires it. Otherwise a change can only be accomplished by a constitutional amendment. No change in the existing state boundaries may be made, however, within two years from the promulgation of the constitution. In a memorandum submitted by Professor Preuss previous to the meeting of the National Assembly, he urged the breaking up of Prussia into a number of smaller states. This obviously desirable proposal appears to have received little popular support except in the Rhineland. The separation of this province from Prussia and its establishment as an equal member state in the federation is loudly demanded by the people, who are greatly angered by the constitutional provision which postpones for two years the accomplishment of their desire for separation. This provision was doubtless inspired by

the alleged machinations of France in the Rhineland and the Palatinate. It is believed that France is working for the establishment of an independent buffer state, toward which the separation of the Rhineland from Prussia would be the first step.

Under the new constitution the Reichstag remains the representative body for the German nation as a unity. The provision in the old constitution which absolves the members from obedience to instructions from their constituents is retained. They are to be chosen by universal, equal, direct and secret, manhood and womanhood suffrage on the basis of proportional representation. Their term is shortened from five to four years. Annual sessions are required. The President of the Republic may dissolve the body, but only once for the same cause. He is not limited, as was the Emperor, in this power by the necessity of securing the assent of the Bundesrath. New elections must be held within sixty days after dissolution of the Reichstag or the expiration of its constitutional term. The Reichstag is not made the judge of its own elections, but this power is vested in a court of election control consisting of members of the Reichstag, chosen by the body for the entire term, and of the highest national administrative court, appointed by the President of the Republic on nomination of the president of the court. Decisions are to be based upon public oral hearings. Members of the Reichstag enjoy the usual privileges of freedom from arrest and irresponsibility for their votes and the expression of their opinions in connection with the discharge of their functions, except by the body itself.

The provisions regarding the President of the Republic are comparatively brief. He is chosen by the whole German people, and must have completed his thirty-fifth year. Further details concerning his election and qualification are left to subsequent legislation. His term of office, seven years, is what the French would call a *septennat personnel*. If a vacancy occurs, a new president is elected for a new period of seven years and not for the unexpired term. Pending such election, or in case of temporary incapacity, the chancellor performs the functions of the office. The President is not subject to prosecution except with

the sanction of the Reichstag. The provision for his removal is unique. On proposal by two-thirds of the Reichstag he is subject to recall by popular vote. During the period between the vote of the Reichstag and the referendum, he is not permitted to exercise the functions of the office. In case the referendum sustains the President, it counts as a new election for the constitutional term of seven years and automatically entails the dissolution of the Reichstag.

The powers of the President include the representation of the nation in matters of international law, the accrediting and receiving of ambassadors, and the conclusion of treaties and alliances; but declarations of war and the conclusion of peace require national legislation, and alliances and treaties relating to subjects covered by national law require the approval of the Reichstag. The President possesses the power of appointment and removal of officials in the civil and military service, and may delegate this power to other officials. He has supreme command of the military forces of the nation. He may use the armed forces to compel a state to perform its constitutional or legal duties. When public security and order are disturbed and armed intervention becomes necessary, he may suspend the constitutional guaranties of personal freedom, the secrecy of the post, telegraph and telephone services, the right of assembly, the right of association, and the right to the possession of private property; but in these cases his action must be immediately reported to the Reichstag which may revoke them. The pardoning power is vested in the President but general amnesties require a national law.

Provision is made in the constitution for a ministry of which the chancellor is the head. The chancellor is appointed by the President, and the other ministers by the President on nomination of the chancellor. They are removable by the President, the chancellor's consent being necessary to removal as to appointment in the case of subordinate ministers. The model of the Prussian *Staatsministerium*, rather than that of the chancellorship of the imperial constitution in the old régime, is followed in the organization of the ministry. The chancellor does not

occupy the supremely predominant position in the new government which Bismarck created for himself in the old constitution. He is merely *primus inter pares*. He presides at the meetings of the ministry in accordance with an order of business adopted by the body itself and approved by the President. The decisions of the ministry are determined on the basis of a majority vote, the chancellor's vote deciding in case of a tie. He determines the general lines of government policy, within which, however, each minister conducts his department independently. All drafts of law, all matters so prescribed by the constitution or law, and all differences of opinion over questions which concern the functions of several departments are required to be laid before the ministry by its members for discussion and decision.

Ministerial responsibility to the Reichstag is provided in a number of separate and scattered articles. All acts of the President require the countersignature of the chancellor or of a minister who thereby assumes responsibility for the same. It is specifically provided that the chancellor and ministers shall possess the confidence of the Reichstag; any of them must resign upon an explicit resolution of that body withdrawing this confidence. Responsibility is, under the constitution, individual and not collective. The chancellor is made responsible for the general lines of government policy and the other ministers for the conduct of their several departments. It is, however, more than likely that the force of circumstances will develop a conventional collective responsibility, and that an adverse vote of the Reichstag will entail the resignation of the entire ministry. Ministerial solidarity is a corner stone of parliamentary government, and it is scarcely conceivable that Germany's political evolution will follow a different course in this respect than that of other countries which have this system.

The President is not permitted to be a member of the Reichstag, and there is no provision requiring that the ministers shall be members. The Reichstag or any of its committees may, however, require the chancellor or any of the ministers to appear before it. They also have the right of access, on their own demand, to the Reichstag or any of its committees. The only

means of enforcing ministerial responsibility contained in the constitution are the right of *enquête* and penal action which may be considered as a form of impeachment. The Reichstag has the right and, on the demand of one-fifth of its members, the duty to appoint committees of investigation. Administrative and judicial officials are required to supply such committees with all information which they may demand. The Reichstag is further empowered to make a complaint before the national supreme court against the President, the chancellor or the ministers on the ground of their having violated the constitution or a national law. The details of procedure and penalties are left to legislation. If the government under the constitution endures, these provisions regarding ministerial responsibility will doubtless be supplemented by conventions which will give the institution the character it possesses in other parliamentary systems.

The Bundesrath of the old régime is transformed into a Reichsrath, chosen on a different basis and with reduced powers. It remains, however, the representative body of the German states in national legislation and administration. Every state has at least one vote. The larger states are given one vote for each million of inhabitants or fraction thereof equal to the population of the smallest state. But no state shall be represented by more than two-fifths of all votes. The states are represented by members of their respective governments, but one-half of the Prussian votes are to be disposed of by the Prussian provincial assemblies. Thus, while the representation and relative weight of Prussia will be considerably increased, this provision will materially diminish the hegemony which the Prussian government would otherwise possess, and doubtless represents a concession to the demand for a division of Prussia into several separate states. There will be a new apportionment of votes following each decennial census.

Clause 2 of Article 61 of the constitution, which provides that German Austria after its union with the German nation shall be represented in the Reichsrath, and until such union representatives of German Austria shall have a deliberative voice in that body, was held by the Peace Conference to be in conflict

with Article 80 of the peace treaty, which provides that Germany shall acknowledge and respect the independence of Austria and shall agree that Austrian independence is inalienable save with the consent of the League of Nations. A demand that this clause in the German constitution be annulled was at once made by the Peace Conference. It was pointed out by the German government that Article 178 of the constitution contains the explicit statement that "The arrangements provided in the peace treaty signed on June 28, 1919, at Versailles are not affected by the constitution." Moreover, Germany in her counter-proposals to the original peace terms explained, in discussing this point, that she had no desire to violate the Austrian frontier, but that if Austria wanted to bring about a state of unity with Germany, the latter could not obligate herself to oppose the wishes of the "German brothers in Austria," for in that case the right of self-determination of peoples would count against Germany. In the answer of the allied governments to the counter-proposals it was merely recognized that Germany did not want to violate forcibly the Austrian frontier, and the implication was, therefore, clear that everything was left to the free initiative of Austria on the basis of national principles and national self-determination. Germany also complained of the manner in which the question was raised which amounted practically to an ultimatum. The Peace Conference remaining firm, however, in its demand, the German government complied and the clause was annulled.

It is provided that in committees of the Reichsrath no state shall have more than one vote. The ministry is required to summon the Reichsrath on demand of one-third of its members. The Reichsrath, itself, and all of its committees are presided over by a member of the ministry, and ministers have the right of initiative of proposals and of participation in all of its deliberations and in those of its committees. Members of the Reichsrath enjoy the right of appearing and of presenting the views of their state governments before the Reichstag.

The initiative of legislation is vested in the ministry and in the Reichstag, but all measures proposed by the ministry must

have been first submitted to the Reichsrath. If the latter disapproves a proposal, its dissent must be recorded in connection with the submission of the measure to the Reichstag. The Reichsrath, itself, cannot submit legislative proposals to the Reichstag, but the ministry is bound to submit any project of law which the Reichsrath proposes, but may accompany it with an exposition of its own views. The Reichsrath possesses a veto on all measures passed by the Reichstag, which must be exercised within two weeks and confirmed within a further period of two weeks. A measure vetoed by the Reichsrath may be re-passed by the Reichstag by a two-thirds majority.

It will thus be seen that the legislative power of the Reichsrath is very much less than that possessed by the old Bundesrath. The tables have been turned for the two chambers, and from being the predominant partner in legislation the body representing the states sinks to a position even less important than that of the house of lords in England. It is given only a suspensive veto which can be over-ridden whenever there is a strong majority in the popular body. The Bundesrath was the strongest bulwark of autocracy; through it, more than through any other agency, the Kaiser was able to exercise an unlimited power. This change should, therefore, insure the domination of the people's representatives in the German government.

Provision is made in the constitution for both the initiative and referendum. The President has the right of invoking the referendum on any measure which has been enacted by the Reichstag, including those which have been passed over the veto of the Reichsrath. The referendum may also be invoked in another manner. All laws ordinarily come into force on the fourteenth day after publication by the President, but on demand of one-third of the members of the Reichstag this publication may be deferred for two months. If, during this period, one-twentieth of the qualified voters demands it, the measure must be referred to the people. A majority of the qualified voters must participate in the referendum election in order to nullify an act passed by the Reichstag. Any laws declared by the Reichstag and the ministry to be urgent are not subject to post-

ponement and the referendum, and the President alone may invoke the referendum on matters concerning the budget, tax laws and salary payments.

A legislative proposal may be initiated by one-tenth of the qualified voters. A fully elaborated draft bill must be the basis of such a demand. The ministry is required to lay such an initiative proposal before the Reichstag, explaining its own views thereon. If the Reichstag approves, it becomes law; otherwise it is submitted to the popular vote.

Amendments to the constitution follow the procedure of ordinary legislation, a two-thirds majority in a session of the Reichstag in which two-thirds of the members are present being necessary. Constitutional amendments may also be made through the popular initiative, but in this case a majority of all qualified voters is necessary.

The section of the constitution dealing with national administration contains a variety of provisions, many of them rather detailed, relating to the conduct of foreign relations, national defense, colonial administration, the merchant marine, the customs service, the collection of taxes, the formulation of a budget, the auditing of accounts, the borrowing of money, the postal and telegraph service, the socialization and administration of the railroads and waterways, and the control of sea signals. These provisions are, in most cases, of such a nature that they might more properly have been left to statutory enactment.

It will be remembered that the old constitution contained no provision whatever on the subject of the administration of justice, and that the German courts rested entirely upon statute. The present constitution previews a system of regular and of administrative courts, both state and national. The independence of the judiciary is secured by the provision for a life tenure, and that judges may not be removed from office or transferred or retired against their will, except by virtue of a judicial decision and on the grounds and by the forms provided by law. The law may, however, fix an age of retirement. Extraordinary courts are declared to be illegal, and no one may be removed from the jurisdiction of his legal judge. It is made the duty of

administrative courts to protect the individual against the acts of administrative officials.

The fundamental rights of the individual, as defined in the German constitution, are generally those found in other bills of rights, but provisions for exceptions to be prescribed by law accompany some of them. Equality of all Germans before the law, equal civil rights and duties of men and women, the suspension of all public advantages and disadvantages due to birth and rank are fundamental constitutional guaranties. Titles of nobility, and orders and insignia of orders, may no longer be bestowed, and titles now existing are to be accepted only as part of a name. The acceptance of foreign titles and orders is likewise forbidden.

Citizenship, and its acquisition and loss, are matters of national law. Discrimination by a state against citizens of other states is forbidden. The right of freedom of travel, of sojourn, of settlement, the acquisition of real property and the pursuit of every means of livelihood anywhere within the nation are guaranteed. The right of emigration from Germany may be limited only by national law. The right of protection of all citizens as against foreign countries is guaranteed both within and without the national boundaries. There is an explicit prohibition against surrendering any citizen to a foreign government for prosecution or punishment. Racial minorities are protected in the use of their mother tongue for instruction, or in matters of internal administration or the administration of justice.

Deprivation of personal liberty is permitted only in accordance with law, and persons deprived of their liberty are entitled to be informed, at the latest on the following day, by what official and on what grounds their liberty has been impaired. The home of every German is declared to be his place of refuge and cannot be violated, though exceptions may be prescribed by law. No person may be punished for an action, punishable by law, before the act has been committed. The secrecy of the postal, telegraph and telephone services is guaranteed, though the law may prescribe exceptions. Within limits, prescribed by law, the right of freedom of expression of opinion by word, writ-

ing, printing, by picture or in any other way is secured. It is explicitly forbidden to restrict this right on the basis of one's labor or employment. Censorship is forbidden except in the case of moving pictures, or for the purpose of combating obscene and indecent literature, or for the protection of youth at public plays and spectacles.

Social rights guaranteed by the constitution, or in regard to which it is directed that legislation shall be enacted, include compensating families with numerous children; protection of motherhood; equal opportunity for physical, mental and social development for illegitimate as for legitimate children; protection of youth against exploitation, and provision for their adequate moral, mental and physical security; freedom of assembly; freedom of association; liberty and secrecy of the suffrage; the right of petition; the right of communal self-administration; freedom from restrictions, such as those based on sex, in regard to officeholding; a life tenure for state employees; the right of civil officials to freedom of political belief and of association; and the right of the individual to reparation by the state for violations of his rights by an official, against whom the state may, however, bring a counter-action. The social duties of citizens are the acceptance of honorary office; the performance of personal services for the state and community; the duty of military service; and the contribution of a just share to the financial support of all public burdens.

Complete freedom of religious worship and of conscience is guaranteed by the constitution. The enjoyment of civil rights and the performance of civic duties may not in any manner be conditioned upon religious beliefs. No one is to be required to perform church duties or attend church exercises or festivities, or take a religious oath. There is no established church and freedom of organization for religious purposes is secured. Religious societies enjoy the right of freely regulating and administering their affairs, within the limits of the law. Such religious bodies as already enjoy the status of public law corporations, and such others, to be organized, as afford a guaranty of permanency, possess the character of public law corporations, and

are entitled on the basis of the civil tax lists to raise taxes subject to regulations by state law. All state contributions to religious societies shall cease, but all property rights of religious bodies are guaranteed. Sunday and state holidays are protected as days of rest and spiritual development. Provision must be afforded for the performance of religious duties in the army and in public institutions, but no compulsion is to be exercised.

The section of the constitution on education and the schools is manifestly the result of compromise, the majority Socialists and the clerical Centrists having the most widely divergent views on this subject, and particularly on the question of religious instruction in the schools. Art, science and teaching are declared to be free. Education is a function in which nation, state and community coöperate. Compulsory school attendance is required. A basic system of eight years instruction and a system of continuation schools up to the age of eighteen is to be maintained at public expense. For the continuation, or middle and higher school system "the rule for guidance is the multiplicity of life's callings, and the acceptance of a child in a particular school depends upon his qualifications and inclinations, not upon the economic or social position or the religion of his parents." General religious instruction is to be included in all public schools, except those where the communities desire education to be completely secular. Schools of a particular religious faith or *Weltanschauung* may be established in communities where there is a demand for them, subject to regulations to be prescribed by law. State assistance is to be provided to those in poor circumstances for attendance at middle and higher schools, with special attention to those children regarded as adapted for education. Private schools as a substitute for public schools require the approval of the state, which may not be accorded unless the standards of scientific education of the teaching staff and the equipment of the schools are equal to those of the public schools, and they must, furthermore, be organized on a democratic basis. Even then, private schools are to be permitted only when there is no public school in the community of the same faith, or when the educational administration recognizes a particular pedagogical interest.

The control of economic life is based upon the principle of justice, with the object of "assuring a life worth living to all." Freedom of trade and business, and freedom of contract are secured, usury is forbidden, and property is safeguarded and may be taken for public purposes only by due process of law. The right of inheritance is guaranteed, but the state's right to a share in the inheritance is recognized. It is made the duty of the state to regulate the possession and use of land in order to promote the possession by each family of a healthful dwelling. Entails are abolished. The unearned increment in the value of land is to serve the community's interest. The state is to control all natural resources. Complete socialization or public control of private economic enterprises which are adapted to the purpose is definitely placed within the competence of the state by national legislation. The administration of such enterprises may be undertaken by the nation, by a state or by a local community. Labor is placed under the special protection of the nation and a uniform system of labor laws for the entire country is to be enacted. Adherence of Germany to the principle of an international labor code is also asserted. Protection is afforded intellectual labor, and the rights of the discoverer, inventor and artist are secured. The right of organization for the defense and promotion of the interests of labor is absolutely guaranteed. It is made the duty of the national government to establish a comprehensive system of industrial insurance.

The soviet idea of an economic organization paralleling the political organization of the state, and sharing with it the functions of government, finds lodgment in the constitution. It is asserted that "Wage earners and salaried employes are qualified to coöperate on equal terms with employers in the regulation of wage and working conditions as well as in the entire economic development of the productive forces." Legal recognition is given to factory workers' councils which are understood to be organizations of all the workers in single factories. Provision is made for their organization in economic districts under district workers' councils, and there is to be finally a national workers' council. The district workers' councils and the national

workers' council are to meet with representatives of employers in what are called district economic councils and a national economic council, "for the purpose of performing joint economic tasks and coöperating in the execution of the laws of socialization." The various trade groups are to be represented in the district and national economic councils according to their economic and social importance. All drafts of laws of fundamental importance relating to social and economic matters are to be submitted by the national government to the national economic council for its opinion before presentation to the Reichstag. The national economic council has also the right of proposing laws which must be submitted to the Reichstag, and of presenting its views to that body through one of its members. Powers of control and administration in the field of their interests may be conferred upon workers' and economic councils. The building up of the workers' and economic councils, and the definition of their relations and duties is made a definite duty of the national legislative body.

The weal of a nation or even the success of a government is not chiefly determined by the character of the constitution which it may adopt. Very much depends upon other things. The economic and social conditions are fundamental. The national political psychology counts for much. Certainly inherited political traditions, ingrained political habits and methods, the strength and intelligence of a broadly based public opinion are often decisive factors. And the presence or absence of a wise and statesmanlike leadership may often be the conditioning circumstance in determining the line of a nation's progress. We in America are learning the fatuousness of relying upon the principle of "a government of laws and not of men." It is these elements in the situation in Germany which are most difficult to gauge. Political opinion is still largely amorphous, and leadership is yet unestablished. Will a genuine faith in democracy succeed in taking root in the minds and hearts of the German people; or will they dumbly submit to the reestablishment of an autocratic and oligarchical rule; or, maddened and

desperate in the full realization of the utter collapse and failure of all their previously cherished ideals and principles of life, will they fall under the dazzling spell of an incendiary bolshevism? Who can say? And yet the adoption of a constitution which, while far from perfect, still reflects so clear a conception of fundamental needs and a political philosophy so moderate and sane affords distinct hope and encouragement that the German nation may emerge from the present situation a fit member of the sisterhood of democratic states.

CONSTITUTIONAL LAW IN 1918-1919. II

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1918

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VI. TAXATION

Several of the cases already considered under the commerce clause involved further questions under the Fourteenth Amendment. Georgia's misuse of the mileage ratio in applying the unit rule to the taxation of wandering cars was found so arbitrary as to violate the requirement of due process.⁷⁵ The minority insisted that "the case presents no question of taxing a foreign corporation with respect to personal property that never has come within the borders of the state." This was not specifically denied by the majority who seem to base their decision on excessive valuation of property within the jurisdiction rather than on taxation of property outside the jurisdiction. Yet in substance the case is one of taxing extra-state values though not extra-state tangible objects.

Missouri's excessive fee for certificates authorizing the issue of bonds secured by railroad property within the state, which was held an unconstitutional regulation of interstate commerce,⁷⁶ was alleged by complainant to be a violation of the Fourteenth Amendment as well. The opinion of the court did not pass on the due-process question, but the cases cited under the commerce clause relied also on the Fourteenth Amendment. The St. Louis tax on manufacturers, measured by the amounts received for the sale of goods produced within the city, wherever such sales occurred, was held to be a tax on manufacturing within the city and not on property or business transactions without the state and therefore not obnoxious to the Fourteenth Amendment.⁷⁷

⁷⁵ *Union Tank Line v. Wright*, (1919) 249 U. S. 275, 39 Sup. Ct. 276, 13 *American Political Science Review* 614.

⁷⁶ *Union Pacific R. Co. v. Public Service Commission*, (1918) 248 U. S. 67, 39 Sup. Ct. 24, 13 *American Political Science Review* 611.

⁷⁷ *American Mfg. Co. v. St. Louis*, (1919) 250 U. S. 459, 39 Sup. Ct. 522, 13 *American Political Science Review* 612.

In *Mackay Telegraph & Cable Co. v. Little Rock*⁷⁸ a company which was subjected to a license tax on poles located on a private right of way thought it was denied the equal protection of the laws because some of its competitors had not been similarly hit. But the court thought that for all that appeared the alleged discrimination might be fortuitous or temporary, and denied relief in the absence of offers "to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance" or that the circumstances of the several companies and their telegraph lines were so much alike as to render any discrimination in the application of the pole tax equivalent to a denial of the equal protection of the laws."

The due-process claim advanced in *Wells Fargo & Co. v. Nevada*⁷⁹ was founded on an allegation that the assessment complained of was made without giving the taxpayer notice and an opportunity to be heard. It appeared, however, that under the Nevada procedure payment of the tax could not be enforced until after a judgment obtained in judicial proceedings "wherein process issues and an opportunity is afforded for a full hearing." In accordance with established precedents, this was held to satisfy the requirements of due process.

Absence of notice and hearing was also complained of unsuccessfully in three cases upholding special assessments. All were declared by the court to be governed by the principle that "where the Legislature fixes by law the area of a sewer district or the property which is to be assessed, no advance notice to the property owner of such legislative action is necessary in order to constitute due process of law." In each case the municipality was found to possess legislative authority in the premises so that the cases came within the general rule. This conclusiveness of the legislative authority was limited to the determination of the district benefited by the improvement. It was recognized that "the question of distributing or apportioning the burden of the cost among the particular property owners is another matter." Complaints directed against the apportionment require separate notice.

*Withnell v. Ruecking Construction Co.*⁸⁰ involved the St. Louis combination of foot-frontage and area rule which in an earlier case⁸¹ had

⁷⁸ (1919) 250 U. S. 94, 39 Sup. Ct. 428, 13 *American Political Science Review* 613.

⁷⁹ (1918) 248 U. S. 165, 39 Sup. Ct. 62, 13 *American Political Science Review* 613.

⁸⁰ (1919) 249 U. S. 63, 39 Sup. Ct. 200.

⁸¹ *Gast Realty Co. v. Schneider Granite Co.*, (1916) 240 U. S. 55, 36 Sup. Ct. 254, 12 *American Political Science Review* 451. See the later case between the same parties in *Schneider Granite Co. v. Gast Realty Co.*, (1917) 245 U. S. 288, 38 Sup. Ct. 125, 13 *American Political Science Review* 70.

been held inapplicable to the particular situation before the court. The earlier case had, however, sustained the one-fourth part of the assessment levied by the foot-frontage rule, and inasmuch as the evidence showed that the assessment in the principal case reached by applying the combination rule was less than what it would have been if the total cost had been apportioned according to frontage, the Supreme Court found itself unable to say that there had been any abuse of power. The court declared that where the assessment is in accordance with a legislative rule, "no previous notice or preliminary hearing as to the nature and extent of benefits" is necessary, and that an attack on a method so prescribed "can only succeed if it has produced results . . . palpably arbitrary or grossly unreasonable."

Similar principles were repeated in *Hancock v. Muskogee*⁸² where the cost of a sewer was assessed according to the area of the abutting lots, Mr. Justice Pitney declaring that it is settled that "whether the entire amount or a part only of the cost of a local improvement shall be imposed as a special tax upon the property benefited, and whether the tax shall be distributed upon a consideration of the particular benefit to particular lots or apportioned according to their frontage upon the streets, their values, or their area, is a matter of legislative discretion, subject, of course, to judicial relief in cases of actual abuse of power or of substantial error in executing it, neither of which is here asserted."

The objection pressed most strongly in *Mt. St. Mary's Cemetery Association v. Mullins*⁸³ was that a cemetery was not benefited by a sewer and therefore could not be included in a sewer district. The association had litigated the issue unsuccessfully in the state courts, and had been there given the hearings deemed sufficient to satisfy the procedural requirements of due process. The only benefit referred to by the Supreme Court in sustaining the assessment was the fact that the sewer served to carry away surface water. It was remarked also that there was nothing to show that "the cemetery would not have been benefited as to sanitation as a result of the construction of the sewers." Without discussion it was asserted that the case was not within the principle of an earlier decision⁸⁴ which excluded high land from a drainage district on the ground that it could not be benefited by the enterprise. The association contended further that the assessment

⁸² (1919) 250 U. S. 454, 39 Sup. Ct. 528.

⁸³ (1919) 248 U. S. 501, 39 Sup. Ct. 173.

⁸⁴ *Myles Salt Co. v. Drainage District*, (1916) 239 U. S. 478, 36 Sup. Ct. 204, 12 *American Political Science Review* 451.

should be reduced because half of its tract had been conveyed for burial lots. The state court had held that only an easement and not the fee had been conveyed and the Supreme Court held that the qualified interest remaining in the association was sufficient to support the assessment. The objection that complainant had been denied the equal protection of the laws because not placed in a district by itself, as some other cemeteries were, was rejected on the ground that "the record fails to show similarity of situation and conditions."

The remaining decision on the subject of state taxation had to do with an Alabama statute which imposed an occupation tax on persons and corporations engaged in construction work within the state, and made the tax on those whose chief office was without the state four times as large as that on those whose chief office was within the state. In reply to the claim that this discriminated against citizens of other states, the state court had said that such citizens might have their chief office within the state and that citizens of the state might have their chief office without the state. A similar position, it will be recalled, had been taken by the Supreme Court during the 1918 term in sustaining a statute restricting licenses for insurance brokers to residents of the state.⁸⁵ In *Chalker v. Birmingham & N. W. Ry. Co.*,⁸⁶ however, the case now under consideration, Mr. Justice McReynolds said that, as the chief office of an individual is commonly in the state of which he is a citizen, the statute would practically discriminate against citizens of other states. The decision declaring the tax invalid was predicated on the privileges and immunities clause of article 4, section 2, and not on the due-process clause of the Fourteenth Amendment, so the case does not shake the rule that permits discrimination against foreign corporations not engaged in interstate commerce or in work for the national government. There are indications, however, that the rule is no longer regarded with favor, and it would not be surprising if before long the Supreme Court materially modifies it.

In view of the increasing number of state income taxes, the interpretation of the federal income tax law reached in *De Ganay v. Lederer*⁸⁷ is important for state as well as national taxation. In this case the Supreme Court answered in the affirmative the following question certified by the Circuit Court of Appeals:

⁸⁵ *La Tourette v. McMaster*, (1919) 248 U. S. 465, 39 Sup. Ct. 160, 13 *American Political Science Review* 627.

⁸⁶ (1919) 249 U. S. 522, 39 Sup. Ct. 366. See 28 *Yale Law Journal* 824.

⁸⁷ (1919) 250 U. S. 376, 39 Sup. Ct. 524.

"If an alien non-resident owns stock, bonds, and mortgages secured upon property in the United States or payable by persons or corporations there domiciled, and if the income therefrom is collected for and remitted to such non-resident by an agent domiciled in the United States, and if the agent has physical possession of the certificates of stock, the bonds and the mortgages, is such income subject to an income tax under the Act of October 3, 1913?"

After reviewing the facts of the case, including the power possessed by the agent to sell, assign, or transfer the securities and reinvest the proceeds of sales, Mr. Justice Day declared: "It is difficult to conceive how property could be more completely localized in the United States. There can be no question of the power of Congress to tax the income from such securities." The case on its facts does not go beyond those in which intangibles have been regarded as having what is called a "business situs" in the place where an agent does an investment business for his principal, and therefore warrants no inference that the Supreme Court means to allow a state to tax income paid to non-residents except where it can tax to him the sources of that income. The opinion, too, is careful to mention "the authority given to the local agent" as an important element in the case, but it may be worth noting that there is no declaration that such element is indispensable.

The so-called Harrison Narcotic Drug Act, passed by Congress on December 17, 1914, came before the court in *United States v. Doremus*⁸⁸ and was sustained by a vote of five to four. The act required all dispensers of drugs to register with the collector of internal revenue and to pay a tax of one dollar a year. Doremus had registered and paid the tax but he had violated the further provision forbidding the sale of drugs except in pursuance of a written order on a form issued by the commissioner of internal revenue. Under the statute the person filling the order was required to file it for the inspection of treasury agents. There were exceptions in favor of physicians, but Doremus, though a physician, did not bring himself within the exception. He contended that the provisions which he violated had no fiscal purpose but were purely police measures and as such were beyond the powers delegated to Congress and an encroachment on the reserved powers of the states. The district court and Chief Justice White together with Justices McKenna, Van Devanter and McReynolds agreed with him; but

⁸⁸ (1919) 240 U. S. 86, 39 Sup. Ct. 214. See 4 *Cornell Law Quarterly* 196, 32 *Harvard Law Review* 846, and 28 *Yale Law Journal* 599. For a note on the decision in the court below see 18 *Columbia Law Review* 459.

the majority, speaking through Mr. Justice Day, found themselves unable to say that the provisions in question had no relation to the raising of revenue. They thought that they tended to keep the traffic above board and subject to inspection, and "to diminish the opportunity of unauthorized persons to obtain drugs and sell them clandestinely without paying the tax imposed by the federal law." The test applied appeared from one portion of the opinion to be whether the provisions had some or no relation to a fiscal object, and not whether the relation if any was a reasonably close one. But earlier it was said that "if the legislation enacted has some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it." While the case does not involve prohibitory taxation and therefore does not furnish a sure index of what the present court will say as to the federal excise on manufacturing goods in factories in which children are employed, it may be significant that the opinion referred with approval to the case⁸⁹ sanctioning the supposedly prohibitive tax on the manufacture of artificially colored oleomargarine.

VII. EMINENT DOMAIN

One who contended that the clause of the Fifth Amendment reading "nor shall private property be taken for public use, without just compensation" entitled him to compensation from a state for damages from flooding due to the elevation of the spillway of a state-maintained dam learned from *Palmer v. Ohio*⁹⁰ that the Fifth Amendment is not a shield against state action.

*Portsmouth Harbor Land & Hotel Co. v. United States*⁹¹ held that no "taking" within the Fifth Amendment was committed by firing projectiles across complainant's land.

In *United Railroads v. San Francisco*,⁹² the court was unable to say from the evidence before it that the damage caused a street railroad by having a new municipal road cross its tracks was sufficient to be regarded as a taking of its property rather than an incidental injury to which its franchise was subject, since the new road had not been constructed. The bill to enjoin the new construction was dismissed

⁸⁹ *McCray v. United States*, (1904) 195 U. S. 27, 24 Sup. Ct. 769.

⁹⁰ (1918) 248 U. S. 32, 39 Sup. Ct. 16.

⁹¹ (1919) 250 U. S. 1, 39 Sup. Ct. 399.

⁹² (1919) 249 U. S. 517, 39 Sup. Ct. 361.

without prejudice, however, so that the company might be entitled to show later that the damage was sufficiently great as to constitute a taking which must be paid for under the due-process clause of the Fourteenth Amendment. This disposition of the case indicates that Mr. Palmer, who unsuccessfully adduced the Fifth Amendment against Ohio, might have had better success with the Fourteenth Amendment.

*Louisville & N. R. Co. v. Western Union Telegraph Co.*⁹³ held that the description of the right of way to be taken by a telegraph company along a railroad was sufficiently definite, although the location of the poles was not specified, where only one line of poles was to be allowed, and they were required to be set up so as not to interfere with the operations of the railroad, and to be subject to the stipulations set forth in the petition, one of which contained an agreement on the part of the telegraph company to change the line at its expense to correspond to any change in the location of the railroad tracks. "The description," remarked Mr. Justice Holmes, "has been held to satisfy the requirements of State law and it would be extravagant to say that the Fourteenth Amendment made it bad." The same case held that no constitutional rights were infringed because the hearing on the question whether there was a right to condemn was given in a separate equity proceeding rather than in the suit in which damages were assessed or because the hearing on other matters was postponed until it should clearly appear that the telegraph company was making the wrongful use of the line which it was charged to contemplate making.⁹⁴

VIII. RETROACTIVE CIVIL LEGISLATION

The familiar principle that the police power for the protection of health, morals and safety cannot be bargained away was applied to dismiss objections raised under the obligation-of-contracts clause in three cases already considered which sustained ordinances prohibiting the storage of oil,⁹⁵ requiring the removal of railroad tracks on the

⁹³ (1919) 250 U. S. 363, 39 Sup. Ct. 513.

⁹⁴ In *Orr v. Allen*, (1918) 248 U. S. 35, 39 Sup. Ct. 23, the court gave no consideration to a complaint against a statute creating drainage districts with power of eminent domain, since it was clear that the objections urged were founded on an assumed construction of the statute which the state court had expressly decided it would not bear.

⁹⁵ *Pierce Oil Corporation v. New Hope*, (1919) 248 U. S. 498, 39 Sup. Ct. 172, 13 *American Political Science Review* 624

public street⁹⁶ and regulating the size and location of billboards.⁹⁷ The contracts relied on in the billboard case were those between the company and advertisers. In the oil case the alleged contract was a previous removal to the present location at the request of the city. Such a request, said Mr. Justice Holmes, "does not import a contract not to legislate if the public welfare should require it, and such a contract if made would have no effect." In the railroad case it was assumed that the tracks were located under a franchise and that the right granted became a vested property right, but it was insisted that the right was held subject to the power of the city to enforce reasonable regulations for the public safety, and the regulation in question was found to be reasonable. It was implied that the degree of reasonableness required to sustain a police measure might be greater when vested rights were affected than when they were not.

In several cases the contracts claimed and relied on were held not to possess the quality imputed to them by the objectors to changes in the *status quo ante*. Northern Pacific Ry. Co. v. Puget Sound & W. H. Ry. Co.⁹⁸ found nothing but a rule of present policy in a statute allowing companies later formed to cross the tracks of existing companies but requiring the newcomer to pay the cost of crossing. A later statute dividing the expenses between the crossed and the crossing road was therefore held applicable to a company whose tracks were laid after the former statute was passed and before the change in policy.

In *United Railroads v. San Francisco*⁹⁹ a statute, in force at the time of the grant of complainant's franchise, prohibiting two street railroads from occupying or using the same street or track for more than five blocks, was thought to be merely a declaration of present legislative policy and a limitation for the time being on municipal officers, but not a contract by the state, nor an authority to the municipalities to contract, against a larger use of the street. This, however, was not the ground of the decision in the case, since the complaint was against a use of the streets by a municipal railroad, and to this it was answered that the court had previously decided that a "covenant by a city not to grant to any other person or corporation a privilege

⁹⁶ *Denver & R. G. R. Co. v. Denver*, (1919) 250 U. S. 241, 39 Sup. Ct. 450, 13 *American Political Science Review* 618, 630.

⁹⁷ *St. Louis Poster Advertising Co. v. St. Louis*, (1919) 249 U. S. 269, 39 Sup. Ct. 274, 13 *American Political Science Review* 624.

⁹⁸ (1919) 250 U. S. 332, 39 Sup. Ct. 474.

⁹⁹ (1919) 249 U. S. 517, 39 Sup. Ct. 361, *supra*, footnote 92.

similar to that granted to the covenantee does not restrict the city from itself exercising similar power."

*Darling v. Newport News*¹⁰⁰ held that a lease by a state of land under water to be used for oyster beds does not import any contract not to permit a municipality to discharge sewage into the water over the beds. It was doubted whether the state would have power to make such a contract and thus tie its hands in a matter so important for the public welfare. In *Pawhushka v. Pawhushka Oil & Gas Co.*,¹⁰¹ it was a city that complained because a limitation lawfully imposed by it on the rates charged by a gas company was removed by an order of the state corporation commission permitting the raising of the rates. The commission acted under authority granted by the legislature. The state court decided against the city, and a writ of error to the United States Supreme Court was dismissed on the oft-declared principle that a city has no rights under the obligation-of-contracts clause in any governmental powers with which the state may from time to time endow it.

In two other cases rates fixed by commissions were unsuccessfully resisted in reliance on the obligation-of-contracts clause. *Englewood v. Denver & S. P. Ry. Co.*¹⁰² held that a town ordinance granting a franchise and permitting certain fares was not a contract immune from the power of the state commission to regulate the charges. The facts are so concealed in the opinion that it is difficult to tell just what the case stands for. In *Union Dry Goods Co. v. Georgia Public Service Corporation*,¹⁰³ the plaintiff had to be told that it could not, by making a contract with an electric light company for certain rates for a term of five years, defeat the power of the state to authorize the service corporation to charge more. It chanced that the commission was vested with power before the making of the contract relied on, but this does not appear to have been regarded as important. Mr. Justice Clarke remarked rather tartly that the decisions which he cites "should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state."

In two cases writs of error were dismissed for want of jurisdiction because it did not appear that the state decisions complained of gave

¹⁰⁰ (1919) 249 U. S. 540, 39 Sup. Ct. 371.

¹⁰¹ (1919) 250 U. S. 394, 39 Sup. Ct. 526.

¹⁰² (1919) 248 U. S. 294, 39 Sup. Ct. 100. See 17 *Michigan Law Review* 429.

¹⁰³ (1919) 248 U. S. 372, 39 Sup. Ct. 117.

any effect to a law of the state subsequent to the alleged contract. *United States Fidelity & Guaranty Co. v. Oklahoma*¹⁰⁴ involved a state decision which held that a surety company which had guaranteed a bank deposit was not entitled to exoneration from the bank and to contribution from the state depositors' guaranty fund. The Supreme Court found that the state court had predicated the result on a line of state decisions which tended to support it and not on a state statute passed after the execution of the bond. The opinion of Mr. Justice McReynolds contents itself with referring to the leading state decision without presenting its doctrine or its reasoning, so that we are left without the necessary data to enable us to judge the merits of the contention denied. The state decision left undisturbed by *Farson, Son & Co. v. Bird*¹⁰⁵ had denied a mandamus against a county treasurer on the ground that the only remedy of the bondholder was against the county board of revenue. This was held to be a decision on a mere question of procedure and not to deny contract rights of the creditors, especially in view of the fact that a later decision of the state court had authorized mandamus proceedings against the board of revenue.

Another impecunious county was involved in *Missouri & Arkansas Lumber & Mining Co. v. Greenwood District*¹⁰⁶ which allowed a state statute providing that judgments on county indebtedness should not bear interest to be applied to judgments rendered before its enactment. It was not contended that a judgment was a contract, but it was urged that judgments which by their terms bore interest at a designated rate could not be changed by subsequent legislation consistently with due process of law. An earlier decision was sought to be distinguished on the ground that the judgment there involved did not specify the rate of interest, but the court answered that "the mere recital of a particular rate does not change the nature of the charge as a penalty or liquidated damages." The earlier decision had held that the allowance of interest on judgments was not a matter of contract but one of legislative discretion which could be altered from time to time as to any interest not then accrued. In the principal case it was noted that the warrants for which the judgment was rendered were non-interest bearing, and it was recognized that, if this had not been the case, "a different question would have been presented."

¹⁰⁴ (1919) 250 U. S. 111, 39 Sup. Ct. 399.

¹⁰⁵ (1919) 248 U. S. 268, 39 Sup. Ct. 111.

¹⁰⁶ (1919) 249 U. S. 170, 39 Sup. Ct. 202.

The only successful reliance on the obligation-of-contracts clause was in *Central of Georgia Ry. Co. v. Wright*¹⁰⁷ which found that an attempt to tax the lessees of a railroad on their leasehold interests violated the original contract in the charter of the lessor railroad prescribing the exclusive mode of taxation. It had previously been held that the property itself could not be taxed to the lessees, and the present tax was said to be an attempt to accomplish by a change of form what had already been held forbidden. In this case it was the constitution of the state which constituted the law impairing the obligation of the contract.

The cases remaining for consideration involve objections to congressional legislation which are predicated upon the due-process clause of the Fifth Amendment. *Fink v. County Commissioners*¹⁰⁸ allowed Indian lands which when allotted were declared nontaxable and inalienable for a term of years to be made alienable and taxable in the hands of an alienee. For all that appears the original exemption was regarded as contractual, though the question is not considered. The case is disposed of on the ground that "it invades no right of the Indian . . . to make the alienation of the land a surrender of the exemption from taxation." While the opinion specifically left undecided the question "whether a grantee of an Indian could avail himself of the Indian's right, if he had any, to assert the unconstitutionality of an act of Congress," it expressed approval of the decision of the state court that the alienee who acquired the opportunity to purchase the land only through the removal of the prior restriction on alienation, cannot repudiate the conditions on which the restriction is removed. On the economics of the legislation so far as it affects the interests of the Indian, Mr. Justice McKenna observed: "It is an error to suppose that this takes anything of value from the Indian. We may here invoke the commonplace, for it is a commonplace to say that we only know the value of a thing by that which makes its worth. Under the restriction against the alienation the land had no worth but in its uses; the restriction removed, it had the added worth of exchangeability for other things—a power of sale was conferred. To say there was no value in that power is to contradict the examples and estimations of the world."

¹⁰⁷ (1919) 248 U. S. 525, 39 Sup. Ct. 181.

¹⁰⁸ (1919) 248 U. S. 399, 39 Sup. Ct. 128.

In *Capital Trust Co. v. Calhoun*¹⁰⁹ an attorney who had a contract with his client for a lien upon the amount which he should collect for him from the government objected because the congressional legislation making an appropriation for the payment of the claim restricted the amount which the attorney should receive from the proceeds to less than the percentage agreed by the client. The case arose in proceedings against the deceased client's administrator and it chanced that the only funds in his possession were those received from the government. The power of the government to restrict payment from those funds was sustained on the theory that legislation was necessary to the recovery of anything from the government and that the favor bestowed must be taken by all interested subject to the limitations contained in the grant. The court pointed out that it did not pass on the question whether the contract could be enforced against assets not received from the government.

IX. IMMUNITIES OF PERSONS CHARGED WITH CRIME

In three cases, convictions under the Espionage Act of 1917 were sustained notwithstanding the objection that, since the offense charged consisted solely of written or spoken utterances, the result was a violation of the First Amendment prohibiting Congress from making any law "abridging the freedom of speech or of the press." The defendants had been found guilty of attempts or conspiracies to obstruct recruiting. In no case was it proven that the obstruction has occurred. Mr. Justice Holmes implied that the First Amendment imposes restriction on punishment for the use of language as well as on the use of the censorship. In *Schenck v. United States*¹¹⁰ he says: "We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will

¹⁰⁹ (1919) 250 U. S. 208, 39 Sup. Ct. 486, 13 *American Political Science Review* 621.

¹¹⁰ (1919) 249 U. S. 47, 39 Sup. Ct. 247. See Zechariah Chafee, Jr., "Freedom of Speech in War Time," 32 *Harvard Law Review* 932, and Thomas F. Carroll, "Freedom of Speech and of the Press in War Time," 17 *Michigan Law Review* 621, for discussions of all the Espionage Cases. Mr. Chafee's article contains an exhaustive bibliography on the subject of Freedom of speech.

bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

It is thus apparent that the practical effect of the free speech amendment depends upon the scrutiny which an appellate court casts at the relation between the evidence offered and the verdict of the jury. In *Frohwerk v. United States*¹¹¹ it was remarked that "we do not lose our right to condemn either measures or men because the country is at war" and it was said of the case before the court: "It does not appear that there was any special effort to reach men who were subject to the draft; and if the evidence should show that the defendant was a poor man, turning out copy for Gleeser, his employer, at less than a day laborer's pay, for Gleeser to use or reject as he saw fit, in a newspaper of small circulation, there would be a natural inclination to test every question of law to be found in the record very thoroughly before upholding the very severe penalty imposed." This certainly hints that the Supreme Court may hold as a matter of law that the likelihood of any harm ensuing from the objectionable publication is so slim that a conviction is unwarranted. But Mr. Justice Holmes goes on to say: "But we must take the case on the record as it is, and on that record it is impossible to say that it might not have been found that the circulation of the paper was in quarters where a little breath would be enough to kindle a flame and that the fact was known and relied upon by those who sent the paper out." This implies that the verdict of the jury will be set aside only where the court finds it impossible for a reasonable man to infer that harm might ensue from what was said, and considerably weakens the declaration in the *Schenck* case that the question is whether the words are so used as to create a clear and present danger of substantive evils.

The opinion in *Debs v. United States*¹¹² adds little to the previous discussion except to point out that expressions which, under all the circumstances, would probably obstruct recruiting, are not protected because "part of a general program and expressions of a general and conscientious belief." The three cases can be fully understood only in the light of all the utterances involved. Space forbids their enumera-

¹¹¹ (1919) 249 U. S. 204, 39 Sup. Ct. 249.

¹¹² (1919) 249 U. S. 211, 39 Sup. Ct. 252.

tion here, but there can be no doubt that all had pretty clearly implied nobility in any one who refused to acquiesce in the draft or contribute to the prosecution of the war. Further constitutional questions may be raised by convictions under the Espionage Act of 1918 which is broad enough in its terms to punish almost any cantankerous or grumbling remarks about the conduct of the war.

Among minor points involved in the Espionage Law Cases are that documentary evidence is not inadmissible because obtained on a search warrant which is valid so far as appears, that a single count in an indictment for conspiring to commit two offenses is not bad for duplicity when the conspiracy is the crime and is single, however diverse its objects, and that the fact that the offense charged might constitute treason does not prevent its punishment as something else or the fact that it is not treason render it immune from punishment.

That judges are limited by the Fifth Amendment in committing for contempt was laid down in *Ex parte Hudgings*¹¹³ in which a commitment for supposed perjury was set aside as void for excess of power, since it did not appear that the supposed perjury had any obstructive effect on the course of justice or that the commitment was based on any other considerations than the mere fact of perjury. On the constitutional question Chief Justice White declared: "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured."

It is not wholly clear that the decision in *Blair v. United States*¹¹⁴ rested on constitutional grounds. Some Michigan persons were subpoenaed to testify before a federal grand jury in New York which was investigating an alleged violation of the Corrupt Practices Act in connection with verifying and filing in New York some reports with regard to a primary election in Michigan for nomination as United States senator. The witnesses came to New York but refused to answer questions on the grounds that the grand jury was without

¹¹³ (1919) 249 U. S. 378, 39 Sup. Ct. 337. Mr. Justice Pitney dissents.

¹¹⁴ (1919) 250 U. S. 273, 39 Sup. Ct. 468.

jurisdiction and that the Corrupt Practices Act was unconstitutional. They were committed for contempt, writs of habeas corpus were obtained and discharged and the complaints came to the Supreme Court. It was there held that the constitutionality of the Corrupt Practices Act was no concern of the defendants and would not be considered. It was further held that witnesses summoned before a grand jury cannot question the jurisdiction of the court or jury over the subject matter under investigation, nor urge objections of incompetency or irrelevancy to the questions asked. The duty to testify was declared to be a public duty "which every person within the jurisdiction of the government is bound to perform upon being properly summoned, and for the performance of which he is entitled to no further compensation than that which the statutes provide."

X. JURISDICTION AND PROCEDURE OF COURTS

THE EXTENT OF FEDERAL JUDICIAL POWER

Disputes involving the question whether a case arises under the Constitution of the United States have so far as seemed feasible been chronicled under the topics to which the substantive issue belonged. One vagabond remains for consideration. *Petrie v. Nampa & Meridian Irrigation District*¹¹⁵ dismissed a writ of error from a state court because the Supreme Court found that the state court, even though it had passed adversely on a federal question, had also decided the case on an independent ground broad enough to sustain the judgment. This independent ground was that the cross-complaint under which the federal right was asserted was filed prematurely.

Two cases held that the suit did not arise under a law of the United States. *Odell v. F. C. Farnsworth Co.*¹¹⁶ was found to be merely a suit for royalties under a contract and not one involving any construction of the patent laws. *Matters v. Ryan*¹¹⁷ was a habeas corpus proceeding to secure custody of a child. The controlling question in the case was the maternity of the child. The allegation in the complaint that the pretended mother brought the child from Canada without complying with the immigration laws was found not to arise under those laws since the petitioner had no power to champion their enforcement.

¹¹⁵ (1918) 248 U. S. 154, 39 Sup. Ct. 25.

¹¹⁶ (1919) 250 U. S. 501, 39 Sup. Ct. 516.

¹¹⁷ (1919) 249 U. S. 375, 39 Sup. Ct. 315.

Two cases were found not to arise under a treaty. The contention in *Cordova v. Grant*¹¹⁸ was that the treaty between Mexico and the United States prohibited the courts from dealing with the title to disputed land until the boundary was established. The United States and Texas had for many years exercised jurisdiction over the tract in dispute. In sustaining the exercise of jurisdiction below, Mr. Justice Holmes declared that it "simply means that the Court finds the Government in fact asserting its authority over the territory and will follow its lead," adding: "It does not matter to such a decision that the Government recognizes that a foreign power is disputing its right and that it is making efforts to settle the dispute. . . . Jurisdiction is power and matter of fact. The United States has that power and the Courts may exercise their portion of it unless prohibited in some constitutional way." In holding that the treaty was not involved in the dispute, the court is following the established doctrine that whatever the treaty may mean the court must follow the interpretation of the political authorities. The issue arose before the Supreme Court because of the contention that the presence of a question under the treaty made the decision of the district court subject to direct review in the Supreme Court. Jurisdiction below was obtained by reason of diversity of citizenship.

In *Compania General De Tabacos v. Alhambra Cigar & Cigarette Mfg. Co.*¹¹⁹ the right to appeal to the Supreme Court from the supreme court of the Philippine Islands depended upon whether the case involved the treaty with Spain continuing in force rights of property secured by patent and copyright prior to the cession of the islands. The court below had held that the trade name involved was a geographical or descriptive name incapable of registration under Philippine statutes or the law as it existed under the Spanish régime. In holding that no right secured by the treaty was involved, Mr. Justice Day declared: "Certainly the treaty, in providing that property rights of this class should be respected, did not intend to prevent the consideration by the courts of the nature and extent of the rights granted, or prohibit the application of laws for the enforcement and regulation of such property rights when not in derogation of the treaty." The grounds of the decision below were said to be "entirely compatible with continued respect for the trade-mark and trade-name rights granted by the Spanish sovereignty."

¹¹⁸ (1919) 248 U. S. 413, 39 Sup. Ct. 138.

¹¹⁹ (1919) 249 U. S. 72, 39 Sup. Ct. 224.

Questions as to the extent and exercise of admiralty jurisdiction arose in three cases. In *The Scow* 6 S.,¹²⁰ which was a libel *in rem* for penalties against a scow for illegal dumping in New York Harbor, the determining question was one of statutory construction, but in the course of the opinion Mr. Justice Pitney observed that "there is no difficulty, on constitutional or other grounds, about assessing an unliquidated fine in the admiralty." *Union Fish Co. v. Erickson*¹²¹ held that a contract for service on a vessel is maritime in nature and that its enforcement in admiralty is not controlled by the state statute of frauds. *North Pacific S. S. Co. v. Hall Brothers Marine Ry. & Shipbuilding Co.*¹²² declared that the contract for repairs of a wrecked vessel was maritime in nature, even though the repairs were to be done largely on land under the direction of the shipowner and at designated rates of compensation for the various services rendered and the materials furnished. Contentions that the repairs were in substance new construction and that the contract was in effect a lease of the shipbuilders yards and facilities were held to be unfounded.

REQUISITES OF JURISDICTION OVER DEFENDANTS

The attempt of Kentucky to gain jurisdiction over nonresident individuals doing business within the state through an agent by service of process on the agent was frustrated by the Supreme Court in *Flexner v. Farson*¹²³ which held that Illinois was not required to recognize a Kentucky judgment founded solely upon service on such agent who at the time of service had ceased to be agent. In deciding the case Mr. Justice Holmes said: "It is argued that the pleas tacitly admit that Washington Flexner was agent of the firms at the time of the transaction sued upon in Kentucky, and the Kentucky statute is construed as purporting to make him agent to receive service in suits arising out of the business done in that State. On this construction it is said that the defendants by doing business in the State consented to be bound by the service prescribed. The analogy of suits against

¹²⁰ (1919) 250 U. S. 269, 39 Sup. Ct. 452.

¹²¹ (1919) 248 U. S. 308, 39 Sup. Ct. 112. See 17 *Michigan Law Review* 591, and 28 *Yale Law Journal* 500.

¹²² (1919) 249 U. S. 119, 39 Sup. Ct. 221. See 32 *Harvard Law Review* 853, and 28 *Yale Law Journal* 697.

¹²³ (1919) 248 U. S. 289, 39 Sup. Ct. 97. See Austin W. Scott, "Jurisdiction Over Non-residents Doing Business Within a State," 32 *Harvard Law Review* 871. See also 3 *Minnesota Law Review* 277, and 28 *Yale Law Journal* 512.

insurance companies based upon such service is invoked. . . . But the consent that is said to be implied in such cases is a mere fiction, founded upon the accepted doctrine that the States could exclude foreign corporations altogether, and therefore could establish this obligation as a condition to letting them in. . . . The State had no power to exclude the defendants and on that ground without going farther the Supreme Court of Illinois rightly held that the analogy failed, and that the Kentucky judgment was void. If the Kentucky statute purports to have the effect attributed to it, it cannot have that effect in the present case." This seems sufficiently enigmatic to enable the Supreme Court to declare later that it means that a personal judgment can never be rendered against a nonresident individual without personal service within the state, or that it means only that service on an ex-agent is insufficient.

PROCEDURAL REQUIREMENTS

Mr. Berkman, the anarchist, deposited with the clerk of the district court a sum of money in lieu of bail. After his conviction he desired the cash returned, but the clerk retained one per cent by virtue of a statute fixing such a fee "for receiving, keeping, and paying out money, in pursuance of any statute or order of court." Mr. Berkman thought that this deprived him of property without due process, took his property for public use without just compensation, and deprived him of the privileges and immunities of a citizen of the United States. The Supreme Court thought otherwise and so held in *Berkman v. United States*.¹²⁴ Mr. Justice McReynolds for the majority declared that the suggested constitutional questions were wholly wanting in merit and too unsubstantial even to raise an issue to give the Supreme Court jurisdiction on the writ of error. Justices Holmes and Brandeis dissented but without giving their reasons. We do not know, therefore, whether they merely thought the contentions of sufficient merit to be considered or whether they went further and thought them worthy of acceptance. If the latter, it does not seem courteous of the majority to declare that the matter is "too clear for serious discussion."

¹²⁴ (1919) 250 U. S. 114, 39 Sup. Ct. 411.

FAITH AND CREDIT TO PROCEEDINGS OF SISTER STATES

The full faith and credit clause was unsuccessfully adduced by two insurance companies which relied on the recent tendency of the Supreme Court to prevent diverse holdings in different states as to the powers of a corporation¹²⁵ and to nullify attempts on the part of a state to use its power over acts within its borders to control acts without.¹²⁶ The statute objected to in *American Fire Insurance Co. v. King Lumber & Mfg. Co.*¹²⁷ made the person who solicits insurance and procures applications the agent of the insurer notwithstanding anything in the policy to the contrary. But the court found that the statute did not attempt to invade another state and exercise control there but "stays strictly at home in this record and regulates the insurance company when it comes to the state to do business with the citizens of the state and their property."

*Hartford Life Insurance Co. v. Johnson*¹²⁸ went off on the ground that the constitutional question had not been seasonably raised in the state court. The determining question in a suit in Missouri against a Connecticut insurance company was whether an assessment on the policy holder was validly levied. The Missouri court held that it was not, and refused to give any effect to a Connecticut judgment of contrary tenor rendered between the trial and the hearing on appeal of the Missouri suit. It was conceded that the Connecticut judgment if seasonably pleaded in the Missouri court must defeat the Missouri action, but the Supreme Court held that the Missouri decision followed the established practice in the courts of that state and was not rendered in a spirit of evasion for the purpose of defeating the claim of federal right. It followed, therefore, that the federal question was rightly refused consideration below and so was not before the Supreme Court.

The company also objected that the Missouri court failed to give full faith and credit to the Connecticut charter. On this point Mr. Justice Clarke declared: "Even if this charter, which was granted by a resolution of the Assembly of Connecticut, be regarded as a public act or record of that state within the scope of the constitutional provision (article 4, section 1), which is not decided, nevertheless since

¹²⁵ See cases reviewed in 12 *American Political Science Review* 662-64, and 13 *American Political Science Review* 246-47.

¹²⁶ See 13 *American Political Science Review* 247.

¹²⁷ (1919) 250 U. S. 2, 39 Sup. Ct. 431, 13 *American Political Science Review* 627.

¹²⁸ (1919) 249 U. S. 490, 39 Sup. Ct. 336.

no statute of Connecticut or decision of any court of that state was pleaded or introduced in evidence in this case, giving a construction to the provisions of the charter which the Missouri courts, treating as valid, interpreted, the exercise by those courts of an independent judgment in placing a construction upon it cannot present a federal question under the full faith and credit clause of the Constitution." Thus the hint thrown out in earlier cases that sister states must follow the home state of a corporation in interpreting its charter, even when the matter has not been specifically adjudicated in the home state in a proceeding to which the litigants in the sister state are parties or privies, still remains to be confirmed by explicit decision.

XI. ADMINISTRATIVE POWER AND PROCEDURE

The power vested in the secretary of war to fix the limits within which houses of ill fame within the neighborhood of army posts should be suppressed was upheld in *McKinley v. United States*,¹²⁹ as one of the "mere details" of the legislation.

The question whether an administrative order complained of was a "law of the state" so as to bring a dispute concerning it within the jurisdiction of the federal courts arose in two cases. *Lake Erie & W. R. Co. v. Public Utilities Commission*¹³⁰ held that an order to a railroad to restore a side track was legislative in character and so to be regarded as a state law. But *Standard Computing Scale Co. v. Farrell*¹³¹ found that instructions issued by the state superintendent of weights and measures with respect to the proper equipment of scales were not a law, but mere suggestions, since the local officials to whom the so-called instructions were issued were not subordinates of the state superintendent nor subject to his control.

Three cases involved the question whether the determinations of administrative officials were final and conclusive. *United States v. Laughlin*¹³² depended upon the construction of a statute providing that "in all cases where it shall appear to the satisfaction of the Secretary of the Interior" that a person has made payments under the public land laws in excess of the lawful amount, a refund shall be made. The secretary contended that it rested in his uncontrolled discretion

¹²⁹ (1919) 249 U. S. 397, 39 Sup. Ct. 324, 13 *American Political Science Review* 620.

¹³⁰ (1919) 249 U. S. 422, 39 Sup. Ct. 345, 13 *American Political Science Review* 630.

¹³¹ (1919) 249 U. S. 571, 39 Sup. Ct. 380.

¹³² (1919) 249 U. S. 440, 39 Sup. Ct. 340.

to direct repayment, but the court held that it was the intent of Congress that he should have exclusive jurisdiction only to determine disputed questions of fact. Since his decision in the case before the court had been rested wholly on a question of law, the Supreme Court held it reviewable. Mr. Justice Pitney remarked that under the construction urged by the secretary the legislative power would in effect be delegated to him, but did not say whether this would be unconstitutional.¹³³

*Houston v. St. Louis Independent Packing Co.*¹³⁴ and *Brougham v. Blanton Mfg. Co.*¹³⁵ sustained determinations of the secretary of agriculture that certain trade names were false and deceptive under the Meat Inspection Act, under the principle that "the conclusion of the head of an executive department on such a question will not be reviewed by the courts, where it is fairly arrived at and with substantial evidence to support it." Both cases reversed decrees of the circuit court of appeals granting relief to the complainants. The opinions of the Supreme Court considered the evidence sufficiently to reach the conclusion that the determination of the secretary was not arbitrary.

¹³³ In *Lane v. Darlington*, (1919) 249 U. S. 331, 39 Sup. Ct. 299, the Supreme Court set aside an injunction awarded by the court below in favor of an owner of land bordering on government land forbidding a resurvey of government land on the direction of the secretary of the interior. The opinion of the Supreme Court said that, as the whole proceeding was merely an effort by the United States to determine the boundary of its own land, "we know of no warrant for the notion that the power is exhausted by a single exercise of it." It was recognized that "the case is different when the act of the secretary is directed to a third person, as, for instance, the approval of a map of the location of a railroad over public lands, where the approval operates as a grant."

¹³⁴ (1919) 249 U. S. 479, 39 Sup. Ct. 332.

¹³⁵ (1919) 249 U. S. 495, 39 Sup. Ct. 363.

AMERICAN GOVERNMENT AND POLITICS

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The Special Session of Congress.¹ Problems left unsolved rather than measures which were passed are the noteworthy features of the special session of the Sixty-sixth Congress—from May 19 to November 19, 1919. The senate was almost exclusively occupied with the Peace Treaty, the session ending in a deadlock over the reservations to the League of Nations covenant; and the treaty, together with the Anglo-French-American alliance and the other agreements of the Paris Conference, went over to the regular session. The appropriation bills, a resolution submitting the woman suffrage amendment to the states, the repeal of daylight saving,² and the prohibition enforcement law, constitute the most important legislation which was completed. The two latter measures were passed over the President's veto and evidenced a disposition on the part of Congress to reassert the authority which during the war had been limited by presidential control. The house of representatives approved a bill—which was badly mutilated before its

¹ For a review of the last session of the Sixty-fifth Congress, see *American Political Science Review*, XIII, 251 (1919).

² The agricultural appropriation bill (H.R. 3157) contained a rider which repealed the daylight saving law. On this account President Wilson vetoed the whole measure. The house voted on July 14, 248 to 135, to pass the bill over the President's veto, the attempt failing for want of the necessary two-thirds. A new bill was introduced with the daylight saving rider eliminated (H.R. 7413) and passed the house on July 18 (Public Law No. 22). This provision had been included in the agricultural appropriation bill by a senate amendment, since the house of representatives on January 18 had passed a special bill repealing the daylight saving law (H.R. 3854). This measure was reported in the senate on July 29, passed the senate on August 1, and was vetoed by the President on August 15. It passed the house over the veto on August 19 by a vote of 223 to 101, and the senate on August 20 by a vote of 57 to 19.

An interesting question of procedure was raised in the house of representatives on August 18, when Representative Wingo challenged the right of the Speaker to withhold the veto message from the house, making the point of order "that the veto message from the President of the United States is on the table and that under the practice and rules of the house and the constitutional provi-

passage and now satisfies nobody—providing for the return of the railroads to their owners (H. R. 10453, House Report 456), and a bill which, if it does not create a real budget system, at least shows some disposition to improve the present haphazard and wasteful method of appropriating public money (H. R. 9783, House Report 362). While the house did not have foreign problems to engross its attention, it had great difficulty in keeping a quorum and lost much time in roll calls.

Apart from the Peace Treaty, the chief interests of the special session were not legislative. They were President Wilson's continued illness, the problem of high prices, and labor troubles.

The Organization of Congress. Both houses were at once confronted by problems of organization with the Republican party in control, after eight years as the minority in the house of representatives and six years in the senate. Harmony was only on the surface in the appointment of the senate committees, and the fight between the "old guard" and "progressives" was rather bitter. At a conference of Republican senators held on May 14, Senator Cummins was chosen president *pro tempore*—a concession to the progressives—and Senator Lodge, floor leader. The conference approved the Norris resolution which provided that no senator should be chosen chairman of more than one of the ten important committees and could not be a member of more than two of these committees: appropriations, agriculture, commerce, finance, foreign relations, interstate commerce, judiciary, military affairs, naval affairs, and post offices and post roads.³

sion the house should proceed to consider it." Speaker Gillett said it was within his discretion to lay it before the house when he pleased, but a unanimous consent agreement to take the veto message up the next day relieved him of the necessity of a more direct and official ruling. It is extremely doubtful whether the Speaker has this discretion, and it would seem that a veto message must be laid before the house at once. In the present case, there was apparently some doubt as to whether the votes necessary to override the veto could have been mustered if the message had been laid before the house immediately, and it is possible that on a more important issue such discretion on the part of the Speaker might result in a decisive partisan advantage.

³The Norris resolution, which came before the senate on November 15, 1918, (amending rule xxv of the standing rules of the senate) provided that no senator who was chairman of one of the important committees (omitting commerce and agriculture from the enumeration above) should be a member of any of the other committees. This was changed to the form in which it was adopted by the Republican conference. A number of the senators who have had long service are taken off one or more of these committees. Senator Lodge, for example, was on the finance, foreign relations, and naval affairs committees; Senator Penrose was on

Senators Borah, Johnson, Kenyon and Jones all declined to serve on the committee on committees, and Senators Gronna and McNary were appointed to give representation to the progressives. The chief fight centered on Senator Penrose and Senator Warren as chairmen of the finance and appropriations committees, respectively, but both senators were appointed.

The organization of the house of representatives was apparently more harmonious. Frederick H. Gillett, of Massachusetts, was chosen Speaker; Frank W. Mondell, of Wyoming, Republican floor leader; and ex-Speaker Champ Clark, leader of the minority. The election of Mr. Mondell came after a bitter fight against James R. Mann, of Illinois, a member of the "old guard," but an able parliamentarian. No enthusiasm has been manifested in the house or elsewhere over Mr. Mondell, and the details of this review show that his leadership has not resulted in any great amount of constructive legislation.

The President's Recommendations. The third session of the Sixty-fifth Congress ended on March 4, 1919, with seven appropriation bills not passed on account of a filibuster by certain of the Republican senators who desired to embarrass the President and force an immediate special session, during which, as a result of the November, 1918,

finance, naval affairs, and post offices and post roads; Senator Warren was on agriculture, appropriations, and military affairs. These senators have each been dropped from one committee.

The Norris resolution was aimed at a system of interlocking memberships on senate committees, under which a few men control legislation in the senate. The work of the system is seen at its worst advantage in the conference committees—composed of the chairman, ranking majority member, and ranking minority member. During the Sixty-fifth Congress, 105 conference committees were appointed, and five senators served on 82 of these, the number for each being as follows: Smoot 33, Warren 23, Nelson 11, Lodge 9, and Penrose 6. (*The Searchlight*, June, 1919.) On March 1, 1919, Senator La Follette made a lengthy speech in the senate which resulted in the defeat of the coal and oil bill. Part of this speech was taken up with an interesting analysis of the functions of these conference committees. He showed that in spite of rules denying conferees the authority to legislate, new provisions were frequently inserted in bills, and that the summary action in many cases taken on the reports of the conference committees deprived Congress of its legislative authority and handed it over to the small groups who were appointed to reconcile the ideas of the senate and house of representatives. He suggested that a new rule requiring that, during the short session, all bills originating in either house be sent to the other house not later than January 10 would be necessary in order to do away with the practice of approving eleventh-hour conference reports in order to get something accomplished.

election, the Republicans would be in control. Throughout the country there was a considerable demand for the convening of the new Congress; it was urged that Mr. Wilson, who had returned from Paris to sign the bills passed during the closing days of the session, should not return to the Peace Conference, but that his paramount duty was to stay in the United States and, with congressional assistance, attempt to solve the very pressing domestic problems of the transition period from war to peace. At the same time it was urged that Congress should reassert the authority which it had lost during the war. There was also a general feeling, irrespective of party, that with certain executive departments handicapped by a lack of funds and with an enormous mass of business awaiting legislative settlement, Congress should be called in special session.

This was done by the President from Paris, and Congress met on May 19. The committees which under the rules are appointed to notify the President that Congress has been organized and is awaiting his message communicated with him by cable, and for the first time in the history of the government the President addressed Congress by the same method. His message dealt only with domestic problems and contained a number of definite recommendations. It will be worth while to enumerate the problems on which Mr. Wilson asked congressional action and to state summarily the legislative results, reserving several problems for more detailed discussion. The President recommended:

1. "A genuine coöperation and partnership, based upon a real community of interest and participation in control" and a "genuine democratization of industry." Legislation to help in this would be a measure coördinating the several agencies of conciliation and adjustment already in existence and the development of the unemployment organization of the department of labor. Except for the compulsory arbitration features of the Cummins railroad bill (S. 3288) and the section of the Food Control Act (H. R. 8624), which was used to justify the injunction against the miners, no action was taken.

2. The passage of a measure permitting returning soldiers to find and take up land in the hitherto undeveloped regions of the country. The Mondell soldiers' settlement bill (H. R. 487) was reported to the house on August 1, 1919, but no further action was taken. The reason for this is that, in the form reported, its passage is doubtful, since it seems to be adapted chiefly to benefit western states containing arid

and cutover land; provides only for colony projects and not individual farms; discriminates in favor of soldiers seeking farm homes, and requires capital on the part of the soldier (\$1500 to \$2000) to secure the benefits of the act.

3. Legislation friendly to the plans and purposes of American merchants and providing a constructive merchant marine policy. A bill repealing certain war legislation and providing for the development of the merchant marine (H. R. 10378) passed the house on November 8, but it relates to the disposition and regulation of government-built ships rather than to the expansion of the carrying trade.

4. A reconsideration of taxes in order to simplify them and to repeal certain minor taxes provided for in the acts of 1917 and 1918. The house passed a bill construing fruit-juice beverages as not being soft drinks (H. R. 7840), and passed a measure repealing the luxury tax (H. R. 2021). This, however, was recommitted to the committee on ways and means (July 12, 1919). A bill repealing the soft drink section passed the house on July 28 (H. R. 2837).

5. No departure from the Tariff Act of 1913, but special consideration to the industries manufacturing dyestuffs and related chemicals. A joint resolution (Public, No. 21) prolongs the war time restrictions on the importation of dyes and coal tar products, as provided in the Trading with the Enemy Act. The house passed an act creating a dye licensing commission (H. R. 8078) and amended the provisions of the Tariff Act of 1913 respecting shell and pearl buttons (H. R. 7705), but neither of these measures was passed by the senate.

6. The passage of the equal suffrage resolution. This was done by Congress almost immediately.

7. The return of the telegraph and telephone lines. A measure relinquishing wire control was approved on July 11 (S. 120, Public Law No. 9).

8. The return of the railroads. The Esch bill (H. R. 10453) was reported in the house on November 10 (House Report No. 456) and was passed on November 17. The Cummins bill (S. 3288) was reported in the senate on October 23 and a new report was filed on November 10 (Senate Report No. 304). The Peace Treaty delayed consideration of this until the regular session. A bill restoring rate-making powers to the interstate commerce commission (S. 641) was vetoed by the President on November 18 (Senate Document No. 155).

9. The repeal of the war time restrictions on the manufacture and sale of wines and beers. Congress responded by passing a stringent enforcement law and overrode the President's veto.⁴

The Woman Suffrage Amendment. Almost the first business completed by Congress after it convened was the passage of the resolution submitting the woman suffrage amendment to the state legislatures for ratification. The resolution was approved by the house of representatives on May 21 by a vote of 304 to 89, as follows: Yeas, Republicans 200, Democrats 102, Independent 1, Prohibition 1; nays, Republicans 19, Democrats 89. The senate acted on June 4 by a majority of 56 to 25, as follows: Yeas, Republicans 36, Democrats 20; Nays, Republicans 8, Democrats 7. This result, which was accomplished practically without debate, showed a marked change in congressional sentiment with respect to woman suffrage by federal constitutional amendment. Such a proposal was first voted on in the senate in 1887, when there were 16 for and 34 against; in 1914 the senate vote was 35 to 34, and in 1918, 53 (26 Democrats and 27 Republicans) to 31 (21

⁴ War time Prohibition began with the Food Control Act of August 10, 1917 (40 Stat. at L. 276) empowering the President to restrict the foodstuffs used in the manufacture of fermented liquors and to commandeer distilled spirits in bond or in stock. The importation of distilled spirits and the use of foodstuffs in their manufacture were forbidden.

A complete war time prohibition act was approved on November 21, 1918 (40 Stat. at L. 1045). It provided that after June 30, 1919, "until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States," no liquors could be sold, and after May 1, 1919, no grains or food products could be used in the manufacture of "beer, wine or other intoxicating malt or vinous liquor for beverage purposes."

President Wilson in his message from Paris of May 20, 1919, suggested a repeal of this act so far as it applied to beers and light wines, and this recommendation was repeated in a special message of June 28. The President said that, under the opinion of the attorney-general, he had no authority to remove the ban until the demobilization of the troops was complete, and he could not say that this had been accomplished, although the emergency was past.

In spite of this recommendation, Congress proceeded to pass a stringent law enforcing war time prohibition and the constitutional amendment which was to go into effect January 16, 1920. A joint resolution adding this amendment to the Constitution was introduced in Congress in August, 1917, reintroduced at the regular session, and adopted on December 28. Three states ratified it on January 16, 1919, bringing the number up to 38, and the amendment accordingly went into effect a year later, January 16, 1920.

The prohibition enforcement bill was H. R. 6810 and had the following legislative history: House Report No. 91 (June 30); passed house July 22; Senate

Democrats and 10 Republicans), three less than the necessary two-thirds. The vote in the house of representatives in 1915 was 174 to 204, and on January 10, 1918, the house approved the amendment by a bare two-thirds, 274 to 136. In 1887 one state allowed women to vote; when the resolution passed Congress complete or partial suffrage had been granted by 28 states.

Twice in June and again in July, 1918, the President urged the submission of the resolution to the states, and in September he appeared before the senate to deliver a special address on the amendment "as a vitally necessary war measure," and "as vital to the right solution of the great problems which we must settle immediately when the war is over," but at that time the senate refused to accede to his wishes. The votes and debates when the resolution was approved by the house and senate in May and June, 1919, showed that Congress recognized the resolution to be inevitable and that each party wished to receive the credit of helping the women to be given suffrage under the federal constitution. By December 7, 1919, 21 states had ratified the amendment and action was anticipated in the near future by several others. The states which had ratified were as follows: Wisconsin, Michigan,

Report 151 (August 18); passed senate September 5; Conference Report agreed to in senate October 8 (senate Document 118) and in house October 10 (House Report 360); vetoed by President October 27 on the ground that constitutional prohibition and war time enforcement should not be coupled in the same measure; passed the house over the President's veto October 27 (176 to 55), and the senate October 28 (65 to 20).

On December 15, 1919, by a unanimous decision, the Supreme Court of the United States held the measure constitutional as applied to distilled liquors (*Hamilton v. Kentucky Distilleries & Warehouse Co.*, No. 589, October Term, 1919). On January 5, by a vote of 5 to 4, the Supreme Court sustained the power of Congress to define "intoxicating" as a content of alcohol in excess of $\frac{1}{2}$ of 1 per cent (*Ruppert v. Caffey*, No. 603, October Term, 1919). The Court by a unanimous decision held that the manufacture of 2.75 per cent beer prior to the enactment of the Volstead measure—that is, under the act of November 21, 1918, which did not define "intoxicating"—was legal (*U. S. v. Standard Brewing Co.*, No. 458, October Term, 1919).

These decisions indicate that had the President issued his proclamation as empowered by the act of November 21, 1918, liquors could have been sold up to January 16, 1920, and that there is no doubt as to the power of Congress to define "intoxicating" as a content of more than $\frac{1}{2}$ of 1 per cent of alcohol, for the enforcement of the prohibition amendment. See my article "Life, Liberty, and Liquor: A Note on the Police Power," 6 *Virginia Law Review*, 156, 179 (December, 1919). The constitutional amendment will be attacked on the ground that it infringes the rights of the states and was illegally adopted, but it is not likely that these suits will be successful.

Kansas, Ohio, New York, Illinois, Pennsylvania, Massachusetts, Texas, Iowa, Missouri, Arkansas, Montana, Nebraska, Minnesota, New Hampshire, Utah, California, Maine, North Dakota, South Dakota.

Profiteering Legislation. The rising cost of living led President Wilson to deliver a special address to Congress on August 8. He was frank to say that no immediate and complete remedy could be hoped for from legislative and executive action, and he suggested that so long as the transition period from war to peace continued there could be no readjustment of the financial and economic system so that prices would go down to a peace level. The President's concrete proposals were as follows:

The sale of surplus food and clothing in the hands of the government.

Publicity as to wholesale prices secured through the departments of commerce, agriculture, and labor, and the federal trade commission, if Congress would provide the necessary funds.

The extension of the Food Control Act, making it apply to more commodities and with a penalty for profiteering which would be "persuasive."

A cold storage law and a law requiring that "all goods destined for interstate commerce should in every case where their form or package makes it possible be plainly marked with the price at which they left the hands of the producer."

A federal license for all corporations engaged in interstate commerce.

Mr. Wilson pointed out, in his message to Congress on December 2, that Congress had acted on only one of these recommendations, and urged that the present Food Control Act (H. R. 8624, Public Law No. 63) be extended for a period of six months following the formal proclamation of peace, when it would become inoperative. Funds had been made available for investigations, but there was no law authorizing the expenditure for the purpose of making the public fully informed about the efforts of the government. A cold storage law passed the house of representatives on September 30 (H. R. 9521), but was not considered in the senate. Surplus foodstuffs were sold by the war department. Congress showed very little disposition to become excited over the high cost of living, and seemed to assume that the responsibility was largely that of the executive, since, by the legislation of the war, he had been granted enormous powers.

The Appropriation Bills. Congress did quick work with the appropriation bills left over from the short session and with necessary new

*History of appropriation bills, first session**

BILL (H. R.) NO.	TITLE	HOUSE REPORT NO.	PASSED HOUSE	SENATE REPORT NO.	PASSED SENATE	SENT TO CONFERENCE	CONFERENCE REPORT (HOUSE) NO.	CONFERENCE REPORT AGREED TO	DATE APPROVED	LAW NO.
1200	Congressional expenses.		May 23		May 29	1919		1919	June 17	2
2329	Urgent deficiency, War Risk.	3	May 22		May 23				June 5	1
2480	Indian.	4	May 26	3	June 6	June 7	27	June 10	June 30	3
3157	Agriculture (H. R. 7413 substituted).	8	June 4	16	June 18	June 20	70	June 27		†
3478	General deficiency.	11	May 29	11	June 10	June 11	97-44	July 1	July 11	5
4226	District of Columbia.	12	June 7	17	June 18	June 23	94-68	July 1	July 11	6
5227	Army.	23	June 13	24	June 25	June 26	90-99-76	July 1	July 11	7
5312	Railroads.	26	June 10		June 12				June 30	4
5608	Navy.	35	June 16	32	June 26	June 27	89-92	June 30	July 11	8
6176	Sundry civil (H. R. 7343 substituted).	48	June 21	52	June 28	June 30	93-98	July 1		†
7343	Sundry civil.	118	July 17		July 18				July 19	21
7413	Agriculture.	124	July 18		July 23				July 24	22
H.J. 147	Making supply laws retroactive.	133	July 21		July 25				July 31	P. Res. 7.
9205	First deficiency for 1920.	309	Sept. 20	273	Oct. 21	Oct. 23	424-426 S. Doc. 144	Oct. 29	Nov. 4	73

* From the *Monthly Compendium*, Sixty-sixth Congress, First Session November, 1919 (W. Ray Loomis, editor.)

† Vetoed..

Table comparing by bills estimates of regular annual appropriations for the fiscal year 1921 with the appropriations made for the fiscal year 1920, during the third session of the Sixty-fifth Congress and the first session of the Sixty-sixth Congress.*

Prepared by the clerks to the committees on appropriations of the senate and house, December 3, 1919

	ESTIMATES, 1921	APPROPRIATIONS, 1920	INCREASE, ESTIMATES 1921 OVER APPROPRIATIONS FOR 1920	DECREASE, ESTIMATES 1921 UNDER APPROPRIATIONS 1920
Agriculture.....	\$37,528,102.00	\$33,899,761.00	\$3,628,341.00	
Army.....	982,800,020.00	772,324,877.50	210,475,142.50	
Diplomatic and Consular.....	11,243,250.91	9,843,661.67	1,399,589.24	
District of Columbia.....	19,179,716.03	15,364,421.00	3,815,295.03	
Fortification.....	117,793,330.00	11,214,291.00	106,579,039.00	
Indian.....	12,994,494.27	11,131,397.03	1,863,097.24	
Legislative, etc.....	122,242,849.02	97,963,831.77	24,279,017.25	
Military Academy.....	6,778,637.20	2,277,932.20	4,500,705.00	
Navy.....	573,131,254.80	616,096,838.88		\$42,965,584.08
Pensions.....	215,030,000.00	215,030,000.00		
Post Office.....	391,713,673.00	609,466,149.00		217,752,476.00
River and harbor.....	42,841,565.00	33,378,364.00	9,463,201.00	
Sundry civil.....	906,725,387.10	607,160,207.95	299,565,179.15	
Total regular appropriations.....	\$3,440,002,279.33	\$3,035,151,733.00	\$665,568,606.41	\$260,718,060.08
Permanent annual appropriations.....	1,425,407,752.29	1,968,997,780.00		543,590,027.71
Total, annual appropriations.....	\$4,865,410,031.62†	\$5,004,149,513.00	\$665,568,606.41	\$804,308,087.79
Deficiencies.....		1,141,931,269.96		
Miscellaneous.....		1,126,478,632.41		
Grand total † (p. 84).....		\$7,272,559,415.37		

* From the *Congressional Record*, December 4, 1919.

† This sum does not include any amount for increased compensation to government employees.

appropriations. An analysis of their legislative history is given in an accompanying table. As revised during the special session, the seven appropriation bills contained nearly a billion dollars less than the figures agreed upon at the third session of the Sixty-fifth Congress. Such a reduction was practically inevitable, since the peace time needs of the government were not so great as they were during the war, or immediately after the armistice, when it seemed that demobilization might not be so speedily effected.

Very little legislation was passed in the form of riders to the appropriation laws. The General Deficiency Act prohibited the use of money authorized by Congress for propaganda to influence legislation, and amended the Alien Property Custodian Act; the army appropriation law contained a good many provisions with regard to administrative details, but did not attempt to lay down any policy with regard to organization, and so also with the Naval Appropriation Act. The sundry civil bill (H. R. 6176) was vetoed by the President on July 11, because it did not make available sufficient funds for vocational rehabilitation. A new bill was introduced and was approved July 19. The first deficiency appropriation bill for 1920 (H. R. 9205, Public Law No. 73) contained a provision exempting farm and labor organizations from prosecution under the Sherman Anti-Trust Act. When the measure was before the house of representatives this proviso was struck out by a *viva voce* vote, but when a record vote was demanded the exemption prevailed by a vote of 201 to 30. The senate retained the proviso by a vote of 31 to 28.

Statistics as to the appropriations for 1920 and the estimates for 1921 are of some interest and are given in an accompanying table (p. 83).

‡ Net increase, estimates for 1921 over appropriations for 1920, regular annual bills.....	\$404,850,546.33
Decrease, estimates for 1921 under appropriations for 1920, permanent annual appropriations.....	543,590,027.71
Net decrease of estimates for 1921 under appropriations for 1920, regular and permanent annual appropriations.....	138,739,481.38
Decrease, grand total of estimates for 1921 under grand total of appropriations for 1920.....	<u>2,407,149,383.75</u>
Amount of estimated revenues for 1921.....	5,620,350,000.00
Amount of estimated postal revenues for 1921.....	<u>415,500,000.00</u>
Total estimated revenues for 1921.....	6,035,850,000.00
Excess of estimated revenues (exclusive of deficiencies and miscellaneous) over estimate appropriations for 1921.....	1,170,439,968.38

Other Legislation. An especially large number of bills and resolutions were introduced during the special session. Many of the former were to secure German cannon or field pieces for various towns in the United States; on August 2, one representative introduced ninety-eight such proposals. The resolutions were numerous because of the desire of Congress to do a great deal of investigating. The numbers of bills and resolutions introduced during the Sixty-fifth and Sixty-sixth Congresses were as follows:⁵

Bills and joint resolutions introduced, and enacted into law

House bills and joint resolutions introduced:	
Bills, Sixty-fifth Congress.....	16,239
Bills, Sixty-sixth, special session.....	10,735
Joint resolutions, Sixty-fifth Congress.....	445
Joint resolutions, Sixty-sixth, special session.....	249
Total House, Sixty-fifth Congress.....	16,684
Total House, Sixty-sixth, special session.....	10,984
Senate bills and joint resolutions introduced:	
Bills, Sixty-fifth Congress.....	5,680
Bills, Sixty-sixth, special session.....	3,457
Joint resolutions, Sixty-fifth Congress.....	230
Joint resolutions, Sixty-sixth, special session.....	127
Total Senate, Sixty-fifth Congress.....	5,910
Total Senate, Sixty-sixth, special session.....	3,584
Total bills and joint resolutions, both houses, Sixty-fifth Congress.....	22,594
Total bills and joint resolutions, both houses, Sixty-sixth Congress, special session.....	14,568
Resolutions introduced:	
Concurrent:	
House, Sixty-fifth Congress.....	73
House, Sixty-sixth, special session.....	38
Senate, Sixty-fifth Congress.....	32
Senate, Sixty-sixth, special session.....	17
Total concurrents, Sixty-fifth Congress.....	105
Total concurrents, Sixty-sixth, special ses- sion.....	55

⁵ These figures are a revision of a table which appears in the *Monthly Compendium* for December, 1919.

Simple:	
House, Sixty-fifth Congress.....	625
House, Sixty-sixth, special session.....	397
Senate, Sixty-fifth Congress.....	487
Senate, Sixty-sixth, special session.....	234
Total simple resolutions, Sixty-fifth Congress.....	1,112
Total simple resolutions, Sixty-sixth Congress.....	631
Total, concurrent and simple, Sixty-fifth Congress.....	1,217
Total, concurrent and simple, Sixty-sixth Congress.....	686
Resolutions passed:	
Concurrent:	
House, Sixty-fifth Congress.....	26
House, Sixty-sixth, special session.....	11
Senate, Sixty-fifth Congress.....	6
Senate, Sixty-sixth, special session.....	6
Total concurrents passed, Sixty-fifth Congress.....	32
Total concurrents passed, Sixty-sixth Congress.....	17
Simple:	
House, Sixty-fifth Congress.....	228
House, Sixty-sixth, special session.....	141
Senate, Sixty-fifth Congress.....	320
Senate, Sixty-sixth, special session.....	137
Total simple resolutions passed, Sixty-fifth Congress.....	548
Total simple resolutions passed, Sixty-sixth Congress.....	278
Total all resolutions passed, Sixty-fifth Congress.....	580
Total all resolutions passed, Sixty-sixth Congress.....	295

During the special session ninety-five public laws were passed. Eleven of these were appropriation bills; thirty-six authorized the construction of bridges, and the other half, with the few exceptions mentioned in this summary, related to unimportant matters. Congress, for example, was called upon to give authority to build the Hud-

son River tunnel between New York and New Jersey; to authorize the war department to loan machine tools and instruments to trade and technical schools; to provide for the improvement of the mail service in Hawaii; to extend the cancelation stamp privilege to the Roosevelt Memorial Association; and to permit women of the Protestant Episcopal Church of the Diocese of Washington to vote and hold office.⁶

The American Legion and the Near East Relief were incorporated; the permanent rank of general was conferred on General Pershing; several amendments were adopted to the War Risk Insurance Act; the Federal Reserve Act was amended to permit banks to invest in the stocks of corporations engaged in the financing of exports; the number of officers in the army was increased to 18,000; \$17,000,000 was appropriated for the completion of the Alaskan Railway; and citizenship was conferred on Indians having military service. Joint resolutions provided for the appointment of an ambassador to Belgium, and increased the compensation of certain postal employees. Only six private laws and one private resolution were enacted during the session.

The President's Illness. President Wilson's speech-making tour on behalf of the League of Nations was begun on September 3 and came to a sudden end on September 26, when he was forced to return to Washington on account of illness. For more than a month the President was able to do only a minimum of official business and there were alarming rumors as to his condition. His direction was missed chiefly in the negotiations for the settlement of the coal strike, and the friends of the league covenant in the senate were sadly handicapped by his inability to formulate a program.

Twenty-eight bills became law owing to the failure of the President to act within ten days (exclusive of Sundays) after their receipt at the White House. He was able to veto the Prohibition Enforcement Act on October 27, but he did not approve two statutes which became law on October 22 and 25 (Public Laws Nos. 64 and 65), and he failed to sign Nos. 67 to 82 inclusive (October 28–November 18) with the exception of No. 73, the First General Deficiency Act for 1920, which was signed on November 4.⁷

⁶ The act was to amend a charter granted by Congress March 16, 1886. See *Congressional Record*, August 2, p. 3789.

⁷ The President signed four bills on October 22 (including the amendments to the Food Control Act), but failed to sign one which became law (Public No. 64) on account of the expiration of the time limit. The President approved a number of bills while he was in Paris. H. R. 2329 (war risk deficiencies) was enrolled on

In spite of the President's inability to preside over cabinet meetings or to act in the Mexican crisis, there was slight disposition to raise the constitutional question: "In case of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President."⁸

The Budget Bill. In his annual address to Congress on December 4, 1917 President Wilson requested the house of representatives to "consent to return to its former practice of initiating and preparing all appropriation bills through a single committee, in order that responsibility may be centered, expenditures standardized and made uniform, and waste and duplication as much as possible avoided."

May 23, sent to the President the next day, and signed in Paris. H. R. 1200 (mileage appropriations for the house) was sent to the President on June 2 and signed in Paris June 17. The Indian appropriation bill (H. R. 2480) was sent to him June 16, and approved on June 30 on board the *George Washington*. During the short session of the Sixty-fifth Congress a number of bills were approved in Paris.

⁸ As to the meaning of "inability" and the proper authority to determine when it exists, constitutional lawyers are not very definite. Professor W. W. Willoughby simply states the problem but does not answer it. (2 Willoughby on the Constitution, 1146.) The most elaborate discussion occurred apropos of President Garfield's illness in 1881; Senator Trumbull, Judge Cooley, Professor Dwight, and Benjamin F. Butler contributed to an interesting symposium on the question in the *North American Review*, November, 1881. Of interest also is Hamlin, "The Presidential Succession Act of 1886," 18 *Harvard Law Review*, 191. Judge Cooley said that all the circumstances would have to be taken into consideration. In times of supreme trial—such as April, 1861 or April, 1917—it would be disastrous if a President withdrew himself for days, whereas at other times, a withdrawal for weeks or even months would not be too inconvenient. Judge Cooley urged that the question of "inability" was one for Congress to determine. "It is possible," he said, "for a case to arise so plain, so unmistakably determined in the public judgment, that public opinion, with unanimous concurrence, would summon the Vice-President to act. But though this would make him the acting President *de facto* he would become acting President *de jure* only after solemn recognition in some form by Congress." It is worthy of mention that the constitutional provision above quoted does not consider the possibility of the death of the President or Vice-President subsequent to the election but prior to the inauguration. Until 1886, succession vested in the President *pro tempore* of the senate and the Speaker of the house, instead of the secretary of state, etc. as at present. At that time the president *pro tempore* did not hold over from Congress to Congress until a successor was chosen; consequently if both the President and Vice-President had died during an interim between Congresses there would have been no one to succeed. Furthermore, under this arrangement succession could vest in a member of the political party which had been defeated in the election. During Cleveland's first administration and after Vice-President Hendricks died a Republican was president *pro tempore* of the Senate.

From its establishment in 1865 until 1880 the committee on appropriations had control of all the regular appropriation bills. In that year the committee on agriculture was given the right to report the appropriations for the department of agriculture and the committee on commerce the right to report the appropriations for rivers and harbors. In 1885 the committee on appropriations lost jurisdiction over six appropriation bills which was given to five other committees of the house: the committees on military affairs (the army and the military academy bills); naval affairs, Indian affairs, foreign affairs, and post office and post roads. At the present time eight committees of the house have jurisdiction over thirteen regular appropriation bills: the committee on appropriations has charge of the deficiency measures that are necessary.

So far as the submission of the estimates is concerned the chief defects are that expenditures are not considered in connection with the revenues; Congress does not require of the President any careful financial program; the estimates submitted represent the desires of individual departments and bureaus, for which the President is not responsible, and are not harmonized with each other, and no attempt is made to prevent duplication and waste or to have the estimates conform to the condition of the treasury.

For years reform has been agitated: Garfield vigorously opposed the change to the present practice of different congressional committees; President Taft strongly indorsed the reports of his commission on economy and efficiency; and legislators like Congressmen Fitzgerald and Tawney and Senator Aldrich were in favor of a budget system. Both political parties were pledged to it in 1916, and the house passed a bill during the special session. It creates a budget bureau in the office of the President, with the responsibility of seeing that an adequate financial prospectus is presented to Congress with the estimates carefully checked. A resolution⁹ was introduced providing for a change in the rules so that all bills appropriating money should go to one enlarged appropriations committee, but this was not acted upon. Enforcing executive responsibility is not nearly so serious a matter as

⁹ H. Res. 168 which passed on July 31 created a special committee (Good, chairman) to devise a plan for a budget. The testimony in the hearings before the committee is of great interest. The bill reported (H. R. 9783; House Report 362) passed on October 21.

depriving certain committee chairmen of some of the powers which they now have in controlling funds for different departments.¹⁰

Congressional Investigations and Committee Hearings. As is natural when the political complexion of Congress changes, the majority party makes every effort to investigate the record of its opponents, but the investigating mania shown by Congress during the special session far exceeded any previous record. Nearly two hundred resolutions authorizing special inquiries or permitting regular committees to send for persons and to take testimony were introduced. Fifty-five of these were passed and their subjects ranged from those of general interest such as the investigations of the Peace Treaty leak, war department contracts and expenditures, a budget system, and war risk insurance, to the reasons for the detention in France of Robert A. Minor and the suspension of Miss Alice Wood, a Washington school teacher.

The session was marked, however, by an unusually large number of valuable hearings by various committees. The testimony on army reorganization before the senate and house committees on military affairs; Senator Kenyon's report on the steel strike; the hearings before the special house committee on the budget; the investigation of the Mexican imbroglio, and the senate and house committee hearings on the railroad question are materials of capital importance. They contain matter which is far more valuable than anything said on the floor of either house, and show that the problems before Congress have been really debated, not so much by members of Congress, as by persons appearing to present their views to the committees. The senate committee on foreign relations published hearings containing the testimony of Secretary Lansing and of the American experts on international law and the Far East; the revelations on Russia of Mr. Bullitt ("the young American" who breakfasted with Mr. Lloyd George),

¹⁰ H. Res. 324, House Report No. 373. So far as "pork" is concerned the only difference under the budget system as proposed by the house committee would be that the legislation would be framed by the rivers and harbors and public buildings committees and the appropriations would go through the single appropriation committee. Speaking of the difficulty of changing the existing committee system, Congressman Frear said: "No Hottentot king or dusky Senator in the far-off cannibal islands was ever more proud of his huge earrings . . . than are some honored members of appropriation committees who have finally reached chairmanships on these powerful committees. . . . Finally entrenched in power, they possess ordinary human attributes and cannot willingly be expected to relinquish seniority rights reached only after years of patient waiting." In the Senate a special committee was appointed to devise a budget plan (McCormick, chairman; S. Res. 58; July 14, 1919) but the committee did not begin to function until after the close of the special session.

and a record of the epoch-making conference with President Wilson at the White House.

It is extremely difficult, however, to secure these reports of hearings, and thus the details of the most vigorous discussion that takes place in Congress are not available for public scrutiny except so far as reported in the newspapers. Speaking of select committees in England, President Lowell says: "They summon before them people whose testimony they wish to obtain; but although a man of prominence, or a recognized authority on the subject, would, no doubt, be summoned at his own request, there is nothing in their procedure in the least corresponding to the public hearings customary throughout the United States, where anybody is at liberty to attend and express his views—a practice that deserves far more attention than it has yet received."¹¹

Congressional Procedure. Congress was in session 160 calendar days. Of these, the house was in recess fourteen days and the senate thirty-two. The average length of a day's session in the house was five hours and forty-five minutes and in the senate five hours and two minutes. To report the proceedings, 8658 pages of the *Congressional Record* were necessary.¹²

In the house, much time was lost in calling the roll. Up to the end of the thirtieth week, the house had taken 240 roll calls, more than two a day. These require an average of at least a half an hour apiece, and the total therefore amounted to 21 working days of five hours and forty-five minutes each. Many of these roll calls were on points of no quorum; others were for record votes on unimportant measures. It would seem as if, with congressional business as congested as it is, and with important problems being delayed from session to session, some method ought to be agreed upon for securing a quorum or having a record vote without a delay of thirty to forty-five minutes. But the practice does not occasion any serious objection, since it affords leisure to members of the house. On several days, however, roll calls consumed practically the whole time.¹³

¹¹ *The Government of England*, vol. I, p. 267.

¹² Much of this space was of course taken up with extensions of remarks and reprints of various kinds of documents, a majority of which, perhaps, related to the League of Nations. Many *Washington Post* editorials were made available to the country through publication in the *Record*, and the views of many American citizens on the Peace Treaty were inserted in the proceedings of the senate. The *Record* frequently seemed like the *Review of the Foreign Press*, which was published by the British government during the war. Senator Williams read to the senate a long description of what would happen if the senate undertook to debate "Now I lay me down to sleep."

¹³ See, for example, the *Congressional Record* for September 5, 1919.

One incident, however, is so significant in the light that it throws on congressional procedure that it ought to be mentioned. With the senate about to be occupied by the Peace Treaty, the house had determined upon a recess longer than three days, and a concurrent resolution providing for this had been agreed to. The four brotherhoods of railway employees on August 2 issued a peremptory demand for an immediate increase of wages, threatening a general strike in September and approving the so-called Plumb Plan for railway nationalization. President Wilson wrote to Speaker Gillett on August 1 and asked that the proposed recess of Congress might be postponed "until such time as we may know definitely the problems which confront us growing out of this critical situation." The house complied with the President's request, and the recess resolution was rescinded 235 to 4. Pending the address from the President, Mr. Mondell asked unanimous consent that the house should meet at noon on Tuesdays and Fridays, no business to be in order except the Chaplain's prayer, the reading and approval of the journal, the signing of bills and resolutions on the speaker's table, and a motion to adjourn. Members were to be notified three days before their presence was necessary, and meanwhile the house committees could continue their work.

Congressman Igoe, of Missouri, however, had pending before the committee on interstate and foreign commerce a resolution relating to the investigation by the federal trade commission of the price of shoes. He asked unanimous consent for its consideration. The majority leader refused to help him in getting it before the house, and Mr. Igoe therefore objected to Mr. Mondell's request. On Tuesday, August 5, Mr. Mondell repeated his request, and Mr. Igoe again objected. On Wednesday, upon the convening of the house, a point of no quorum was made, and Mr. Mondell moved that the house adjourn. On Thursday the point of no quorum was again made and the house adjourned. On Friday, a bare quorum was secured; the President's address was listened to, and the house adjourned.

Unsettled Problems. The Peace Treaties, the Mexican problem, and the Panama Canal Treaty, providing for a payment to Columbia, will occupy much time in the senate. The return of the railroads, industrial legislation, the development of foreign trade, budgetary reform, the extension of the war risk insurance bureau, army reorganization and compulsory military training, a shipping policy, the leasing of oil lands, soldier settlement legislation, and many other questions will keep Congress in session well into the summer.

LEGISLATIVE NOTES AND REVIEWS

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The Richards Primary. The state of South Dakota is becoming famous as a laboratory for experiments in popular government. It was the first state to adopt the initiative and referendum, those provisions being incorporated into the state constitution by the Populist legislature of 1897 and ratified by the people at the election of 1898. The Republican legislature of 1917 took a long step towards state socialism when it met the demands of the Non-Partisan League by proposing a series of amendments under which the state may now engage in almost any industry, a program which was likewise approved by the people at the succeeding election. Recently the state has attracted further attention on account of its original and peculiar—some would say “freakish”—primary law, under which South Dakota has been the first state to take any official action with regard to the selection of candidates for the coming national campaign.

The so-called “Richards Primary” is almost exclusively the work of one man, R. O. Richards of Huron, who, as a private citizen (Mr. Richards has been a defeated candidate for United States senator and governor and has served as Republican state chairman) has taken an active interest in politics, and has devoted his talents and his means to his one hobby—the securing of responsible party government. The present South Dakota primary law, of which he is the author, is but the culmination of a series of experiments in the field of primary legislation. Its adoption can only be understood when considered in relation to the initiative and referendum, to factional contests within the Republican party, and to the persistent efforts of Mr. Richards himself.

The active agitation for the direct primary in South Dakota began in 1903, largely under the leadership of Mr. Richards. In 1904 the first use was made of the constitutional initiative in drawing up a primary measure and petitioning the legislature for its submission to a vote of the people. Although the initiative petition contained about twice the required number of signatures, the “stalwart” legislature of

1905 refused to submit the measure, as required by the constitution, and passed instead the so-called "Honest Caucus Law," retaining the old convention system with but slight restrictions. This violation of the constitution resulted in 1906 in the election of Governor Crawford and a "progressive" legislature, and the passage in 1907 of the first primary law. This law, which still retained some of the features of the convention system, continued in force, with some amendments, until 1912.

Meanwhile Mr. Richards had prepared a primary measure in conformity with his more advanced notions, secured its introduction in the legislature of 1911, but failed to secure its passage. Enough signers to an initiative petition for the same measure had, however, been obtained; it was immediately reintroduced in that form, and the legislature of 1911, remembering the lesson of 1906, submitted the measure to a vote of the people. At the election of 1912 it was adopted by a vote of nearly two to one.

The Richards primary thus enacted was the prototype of the present law, containing several very unusual features, such as the official recognition of party factions, an elaborate scheme for the initial proposal of candidates before the primary, party indorsement for appointive positions, party recall, and a postmaster primary. The law was severely criticized as being too complicated and expensive and as promoting factional quarrels within the party; and the legislature of 1913, even before the Richards law had been put into operation, submitted in its stead another initiated measure, the so-called Coffey law, which had for its purpose the repeal of the Richards law and was itself a reversion to the more orthodox type of primary. The people, at the election in 1914, refused, by a large majority, to approve the new measure and thereby sustained the Richards law.

In spite of this emphatic indorsement of the Richards primary by the people at two successive elections the legislature of 1915 enacted the so-called Norbeck primary law,¹ which repealed the Richards law and substituted a type of primary along the usual lines. The legislature also, taking advantage of an earlier ruling of the state supreme court that emergency measures were not subject to the referendum,² attached the emergency clause to the Norbeck law, and thus prevented the measure, with its appeal of the Richards law, from being submitted to a vote of the people—"thereby locking and bolting the door on the

¹ From Peter Norbeck, the present governor of South Dakota.

² State ex rel. Lavin v. Bacon, 14 S. D. 394 (1901); 85 N. W. 605.

people," as Mr. Richards said. The constitutional question as to whether the legislature had the right to repeal an initiated law was carried to the Supreme Court, which held that the legislature had that right, since under the provisions of the South Dakota initiative and referendum it was not expressly denied.³

Not at all discouraged at this turn of affairs, Mr. Richards immediately set about revising and perfecting his measure, and again secured its submission through the initiative and referendum at the election of 1916. At this election his measure was defeated by a very close vote (a change of 163 votes would have secured its adoption); but it was again revised, reinitiated, and resubmitted at the election of 1918, when it was adopted by a comfortable margin.

Such, in brief, is the history of the primary movement in South Dakota. The Richards law, practically in its present form, has been continuously before the people of the state since 1911, and has been submitted to a direct vote four times, failing only once to secure the popular approval. (Incidentally, it might be mentioned that the Richards primary is the only initiated law that has been ratified by the people of South Dakota during the twenty years of the initiative and referendum, although several other initiated measures have been submitted.) It has been in actual operation during one preëlection campaign, that of 1913-1914; and it is now, with some slight changes and some additional features, again being put into operation. As an experiment in popular government, the Richards primary is so different from any other primary law in existence as to deserve careful study from students of politics. In spite of its very unusual features, it seems to be little known outside the state of South Dakota; hence this analysis of its most salient provisions.

Party Organization. The Richards primary is a loose form of the closed primary. No preliminary party registration or enrollment is required, but separate ballots are furnished for each party, and any voter whose party affiliation is challenged must declare his allegiance under oath, stating that he is "in good faith" a member of that party and a believer in its principles "as declared in the last preceding national and state platforms."

Party committees are constituted in no unusual fashion. The county central committee is made up of one committeeman elected by

³ State ex rel. Richards v. Whisman, 36 S. D. 260 (1915); 154 N. W. 707. The case was carried to the United States Supreme Court, which declined to take jurisdiction.

ballot of the party voters in each precinct, the chairman being chosen by majority vote of these committeemen and of the nominees for county and legislative offices. The state central committee is similarly made up of one committeeman elected in each county. The state chairman and the national committeeman are both elected at the state-wide primary. One unusual feature, however, with regard to party committees, is that of unit representation, that is, each party committeeman at all meetings of the committee has a vote equal to the number of votes cast at the last general election within the territory he represents (precinct or county) for his party's candidate for governor.

Selection of Candidates and Issues. The Richards law in this respect presents some very novel features, the machinery being somewhat elaborate and complicated, and combining to a certain extent the representative convention with the principle of direct selection. Principles rather than individuals are stressed at all times. There are six distinct steps in the process of selecting the party nominees and the party issues.

(1) Precinct initiatory election. The process of selection begins with an election in each precinct on the second Tuesday in November of every odd-numbered year, for the purpose of choosing one party committeeman and three county proposalmen for each party. The election is conducted under what the law calls the "honest caucus law plan;" that is, the election is open to all the voters of the precinct, who organize themselves into a meeting, but conduct the election according to certain prescribed forms, with separate ballots for each party.

(2) County proposal meeting. The proposalmen of each party thus elected in the precincts meet separately in county convention on the third Tuesday in November following the precinct elections, organize by choosing a chairman and other officers, and elect by roll call three state proposalmen. This meeting then adjourns till a later date.

(3) State proposal meeting. These state proposalmen of each party meet separately at the state capitol on the first Tuesday in December of every odd-numbered year, and at this state proposal meeting take the first steps in the actual selection of the party candidates and issues. The meeting of each party's proposalmen is called to order by the state party chairman, or in his absence by any of the proposalmen present, and organizes by electing its own chairman and other officers. The proposalmen present constitute a quorum, and are at all times required to act "without sub-committees, as a committee of the whole, sitting in open and public session." Each proposalman has a vote equal to one-third

the number of votes cast in his county at the last general election for his party's candidate for governor; all important votes on candidates and issues are required to be by roll call; and a majority of all the votes entitled to representation is necessary for a decision.

The work of this state proposal meeting is not finally to select, but merely to propose an official set of candidates and principles to be voted upon at the party primary. The proposed platform is adopted first, and it is provided that the various planks are to be voted upon one at a time by roll call. After having in this way proposed a state platform, the meeting proceeds to select from such party platform one "paramount national issue" and one "paramount state issue," and prepares a summary of principles (national and state), limited to eight words, for a ballot heading. Finally, the meeting proposes its candidates for the various presidential (including President, Vice-President, and presidential electors), congressional, and state offices, and for party representatives (state chairman, national committeeman, and national delegates and alternates).

(a) Majority representative proposals. The principles and candidates thus selected by the majority of the state proposal meeting are called representative proposals, being made by a representative convention. These representative proposals, containing a complete list of the principles and candidates proposed, must be certified by the chairman and secretary of the state proposal meeting, and filed in prescribed form with the secretary of state on or before the 1st of January. Every candidate concerned must by that date sign a declaration of his intention to accept the nomination and the office, to adhere to the party principles, and to obey the party recall if invoked. If all these formalities are complied with, the summary of principles and the names of the candidates are placed by the secretary of state on the primary ballot.

(b) Protesting representative proposals. The majority of the state proposal meeting having proposed its set of principles and candidates, there is opportunity also for the minority to do likewise. If five or more of the state proposalmen dissent from the majority proposals, they may on or before the third Tuesday in December file protesting representative proposals, containing their principles and candidates. These proposals must be certified by the five or more protesting proposalmen, and in every other respect must conform to the requirements for the proposals of the majority. These having been complied with, the principles and candidates of this group are also placed on the primary ballot.

It should be noted that on the ballot there is no distinction in name between the proposals of the majority and minority groups, both being called merely representative proposals. The law provides, however, that the principles and candidates proposed by the majority proposalmen shall always be placed in the last (righthand) column of the primary ballot, while those of the protesting proposalmen are to be placed in the column next to the last. In case there is more than one group of protesting proposalmen, that group which first files its proposals gets its list on the ballot, "the intention being," reads the law, "to permit only two representative proposals to be printed on any one party ballot."

(4) Independent proposals. In addition to the two representative proposals, independent proposals for individual candidates may be filed, apparently without limit as to number. These independent proposals are made in the form of petitions, signed by one per cent of the party voters in the territory concerned, if for presidential, congressional, state, or district offices; or by twenty party voters, if for county or legislative offices. An unusual feature in this connection is the provision that it is unlawful to secure more than twice the required number of signatures to any petition—probably with the view of encouraging numerous independent proposals.

Candidates for legislative office in joint legislative districts (composed of more than one county) and candidates for judicial offices are required to file as independent candidates, although judicial candidates may also be indorsed by representative proposals. Other conditions are the same as for representative proposals, except that no statement of principles and paramount issue need be made unless the proposal is of a candidate for President or governor. Independent candidates are placed in the first column of the primary ballot, being given what is considered the choice position. It may also be noted that if there is no opposition to any proposed candidate, whether independent or representative, such candidate is certified as the party nominee without going before the primary election.

(5) Reconvened county proposal meeting. After the state proposal meeting has been held, the county proposalmen of each party (who met originally in November to elect the state proposalmen) reconvene at the county seat on the fourth Tuesday in December. At this meeting the county party chairman is required to present the various representative and independent state proposals that have been made, from among which the county proposalmen select and indorse the paramount

state issue which they prefer. The meeting then proceeds to the selection of representative candidates for county and legislative offices in the same manner as was done in the state proposal meeting. Each proposalman has a vote equal to one-third of the vote cast at the last general election in his precinct for his party's candidate for governor; a roll call is required upon the indorsement of the paramount issue and the selection of candidates; and a majority vote is necessary to a choice.

There are also similar provisions with regard to protesting representative proposals, the majority of the meeting having the first right, however, to propose and file its candidates and select the representative column on the ballot in which they shall be placed. All such proposals for county and legislative offices, whether independent or representative, are to be certified in the same manner as are those for state and national offices, but to the county auditor instead of to the secretary of state; and the same declarations are required of all candidates.

(6) Primary election. This final step in the selection of the party nominees and the determination of the party principles is held on the fourth Tuesday in March of every even-numbered year. The primary election under the Richards law is conducted much as other primary elections. There is a separate ballot, with a distinctive color, for each party; a plurality is required to nominate; the secretary of state and the county auditors are the chief election officers, with duties ordinarily pertaining thereto; there are detailed regulations governing the conduct of the primary and the determination of the results.

An unusual feature is provided, however, with respect to the presidential primary. The law provides that the indorsement at the primary of candidates for President and Vice-President and their national paramount issue is to have the "force and effect of instructions" to the delegates to the national convention to vote for and support such candidates and principles at least three times before supporting any compromise candidate or platform. It is further provided that presidential electors nominated in the primary "shall cast their votes in the electoral college for the candidates for President and Vice-President who were nominated by the national party convention"—an attempt, apparently, to prevent the repetition of what happened in 1912, when the Republican presidential electors cast the vote of South Dakota for Roosevelt, although Taft was the regular Republican nominee.

Publicity. All the studied efforts of the Richards law to make principles rather than men the issue not only between parties but also

between the factions within a party, would be useless without an intelligent public opinion; hence it is not strange that elaborate provisions for enlightening the public as to the issues form an important part of this law. These publicity provisions are among the most novel and interesting features of the Richards primary.

"Political record books" are required to be kept, one by the secretary of state and one by each of the county auditors, in which are recorded all the transactions of political parties relating respectively to state and national, and to county affairs, and including the minutes of party committee meetings, party platforms, representative and independent proposal papers, challenges and acceptances to joint debate, and party indorsements for appointments. These books do not directly provide publicity, being strictly record books, but should surely furnish a fund of useful information for the future historian of party politics.

The publicity pamphlet is no longer an altogether novel feature, but South Dakota is the first to use it for the pre-primary as well as for the preëlection campaign. The state party publicity pamphlet provided for by the Richards law is compiled by the secretary of state from the material in the political record book. In addition to the platform principles, proposals and petitions of all the party candidates, the pamphlet will contain a biography and half tone cut of any candidate who deposits \$100 for both or \$50 for either. Written arguments may also be included, limited to 800 words in support of the principles of each representative group of candidates, and to 200 words in support of any independent candidate. It is expressly provided, however, that no platform proposals or arguments shall contain any "personal attack of character" on any one. The arrangement of the material, the kind of type to be used, and other details, are carefully regulated. A copy of the pamphlet is to be mailed by each county auditor to every voter in his county forty days before the date of the primary. There is no expense to the candidates, except for the biography and cut, the expense of publication being borne by the state, that of mailing by the county.

Provisions for a series of public joint debates between the candidates for President and between those for governor are among the most novel features of the Richards primary, and are the one striking feature of the present law which was not included in that of 1912. The law requires that there be held at least one presidential and sixteen gubernatorial public joint debates between the first Monday in January and the fourth Tuesday in March; that is, pre-primary debates between

the presidential and gubernatorial candidates within each party. These debates are to be strictly discussions of each candidate's "paramount issue"—such paramount issue being defined as "one well-defined and definite principle for a public policy that shall be first filed with the secretary of state by an independent candidate proposal for president or governor, or representative proposal. Such representative paramount issue shall be expressed in not more than eight words as a summary for heading of the appropriate column on the primary ballot."

There is a definite system of challenges and acceptances provided for in the law. Challenges to debate are to be made in the following order: (1) By the independent candidate, or, if there be more than one such, by the independent candidate who first filed his proposal petition. He is not, however, required to challenge, unless there is no majority representative candidate, in which case he must challenge any other independent or representative candidate. The independent candidate is at all times permitted to designate the opposing candidate with whom he wishes to debate (if there be more than one such). (2) If the independent candidate does not avail himself of his right to challenge within the specified time, then the protesting representative candidate is required to issue such challenge to his opposing representative candidate. Challenges duly made must be accepted, but in case more than one is made to the same person, the challenged candidate need accept only one, in the following order: (1) the challenge made by an independent candidate, (2) the challenge by the protesting representative candidate, the purpose of the law being expressly stated as "always to give priority to the challenge of an independent candidate, so as to encourage leadership."

Presidential candidates may debate in person or by proxy, at their option; but candidates for governor are required to debate in person, except in case of inability, unforeseen disability, or sickness, and even then are required to be present at the debate unless a sworn physician's certificate is presented as to inability to attend on account of sickness. Failure on the part of any candidate to make or accept a challenge, when required, operates as a legal withdrawal of that candidate's name from the primary ballot; and the law distinctly provides that "such vacancy shall be filled by a candidate who will make the challenge or fill the debates, or the place shall remain vacant."

There are elaborate regulations for the conduct of these debates. Unless a more suitable time and place is designated by the challenged candidate, the debates are to be held in the court room of the county

court house at 8.30 p.m., any other public business going on at that time to give way temporarily. The arrangements for the presidential debates are made by the national committeeman or the state chairman, those for the gubernatorial debates by the county chairman of the county in which any debate is to be held. Over the latter the county chairman also presides, or he may appoint a "jurist" to preside; or if he is absent altogether, the presiding officer is chosen from the audience by majority vote of those present. The debates are restricted to the "paramount issue" of each candidate, the law expressly stipulating that "no personalities or personal imputations may be brought into the debate under any circumstances." The challenger's paramount issue is debated first, then that of the challenged candidate, and so on during the series. The candidate whose paramount issue is being debated opens and closes; the time is limited to 20 minutes for the opening affirmative argument, 30 minutes for the negative, and 10 minutes for the closing. Roberts' rules of order are to be observed.

In addition to these debates within each party during the pre-primary campaign, provision is also made for a series of twelve post-primary debates between the nominees for governor of the two largest parties (as determined by the vote at the primary). These debates are restricted to the paramount issue which was approved within the party at the primary, and are conducted in every way as those held during the pre-primary campaign. The series is to be held between September 1 and November 1 preceding the general election; the nominee of the smaller party is required to make the challenge; and failure to make or accept the challenge as required, or failure to attend and discuss the paramount issue, automatically creates a vacancy on the ticket, which as before must be filled by one who will fulfill the debating requirements or the place remains vacant.

Party Indorsement for Appointive Positions. Among the novel features of the Richards law is the plan for official party indorsements for appointive positions within the state, whether state or national. For positions other than postmaster, any party elector may file an application with the secretary of state, who mails a copy to each member of the state central committee of the applicant's party. This party committee, with the national committeeman, meets at the state capitol on the second Tuesday in December after the general election, for the purpose of hearing applicants and receiving written recommendations concerning them, acting always "in public session and without sub-committees, as a committee of the whole." The committee then

proceeds, by open ballot and majority vote, to indorse for the positions concerned such of the applicants as it sees fit, or such other persons "as shall be agreed upon by a majority of such committeemen present for the betterment of the public service." These indorsements by the party state committee are considered the official party indorsements, and as such are transmitted at once to the appointing authority, if for a state position, and to the President and each of the United States senators and congressmen from the state, if for a national position.

For the position of postmaster a special method of securing the party indorsement is provided through postmaster primaries, limited strictly to the municipalities concerned and to the party of the national administration in power. Such a postmaster primary may be called in any municipality, sixty days before the expiration of the postmaster's commission or immediately upon a vacancy occurring, upon seven days' notice by three party electors of the national administration in power. Any resident elector of that party may become a candidate at the primary by filing a petition with the municipal clerk, duly signed by the required number.

The postmaster primary is conducted as are other elections, the municipal clerk being the chief election officer. In case there are three or more candidates, the feature of first and second choices is made use of in order to secure a majority selection. The choice of the party voters, as expressed at this primary, is certified to the President, postmaster-general, and congressman from the district as the official party indorsement for the position of postmaster.

Candidates for all appointive positions are required to sign a declaration that they will qualify if appointed and obey the party recall if invoked.

Party Recall. One of the unique features of the Richards primary is that for the recall of public officials, whether elected or appointed, not by the general electorate, but by the party through which such official secured his election or appointment, and conducted as a quasi-judicial proceeding with a "jury trial." The party recall may be invoked against an official who fails to adhere to the party principles; or who is charged with misconduct, crime, or misdemeanor in office, or with drunkenness, gross incompetency, or neglect of duty. It may be invoked (1) by written petition of 33 per cent of the electors of his party, within the territory from which he was elected or appointed, or (2) by written petition of 66 per cent or more of the members of his party central committee, state or county, as the case may be.

A complaint must be filed with the recall petition, setting forth specific charges. Jurisdiction to hear the complaint and to try and determine the charges is vested in the party state or county central committee, according to the character of the office. The date for the hearing is fixed by the party chairman, who also presides at the trial. The committee members are specially sworn; counsel may be employed by both sides; witnesses are examined and evidence is taken; and the hearing in general takes the form of a judicial proceeding.

If 90 per cent or more of the committee members concur, the charges are sustained, with no right of appeal to any other tribunal. Official notice of the committee's decision is served upon the officer concerned, with a formal request for his resignation. Failure on the part of the officer to resign, when thus formally requested, is declared by the law to constitute "proof of his moral misconduct and corrupt conduct." The office is thereupon to be "declared vacant by such party organization," evidently meaning the party committee which conducted the trial.

This somewhat doubtful provision is further clouded by the fact that no provision is made for filling the vacancy so "declared," and it is difficult to see how the party organization could enforce its recall, if the official refused to resign. It may also be noted that the recall applies only to officers elected or appointed as party candidates, and no method is provided for the recall of those who may have secured their positions independent of any party.

Miscellaneous Features. There are provisions regarding contests, limitation of campaign expenses, illegal voting, and corrupt practices, that are in no respect startling departures from the provisions on these subjects found in other laws. Vacancies in party positions and in nominations are to be filled by the appropriate party committees. Vacancies in representative proposals before the primary are, however, to be filled in a rather unusual manner, in that the chairman of the proposal meeting is to designate the new candidate. When we recall that representative proposals include the proposals of both the majority and minority groups of proposalmen, this provision seems to give the chairman the right to fill a vacancy occurring even in the proposal of the opposing faction.

The expense of the Richards primary is also worth noting. In addition to the complicated and voluminous machinery of initial and primary elections, the novel features of the law are all a source of expense to the taxpayers. The proposalmen and the party committee-

men are paid a mileage of five cents for attendance upon all necessary meetings, and the candidates required to debate receive a mileage of ten cents for all necessary travel in that connection. The expense of the publicity pamphlet is borne by the state and county, that of the postmaster primary by the municipality concerned.

Comment on the Richards law is not the purpose of this article. It may be that some of its provisions will not stand the test of a close constitutional scrutiny. But the very novelty of its outstanding features—the initial proposal of candidates by representative conventions, the idea of “unit representation,” the emphasis on the “paramount issue,” the scheme of public joint debates, the plan for constituting the party state committee into a sort of civil service board, the postmaster primary, the party recall—will secure the keenest interest on the part of students of government in the operation of the new South Dakota law. It may well be that there is still something to be learned in the field of party legislation.

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Post-War Legislation. Before the declaration of war by the United States in 1917, and during the continuance of the conflict, scores of laws were enacted by the various states to meet abnormal war conditions. With the conclusion of the war an entirely different set of problems has emerged which has led to new types of legislation. These new laws are designed to facilitate the reassimilation of soldiers, sailors and marines, to avert the disloyal tendencies to un-Americanism displayed during and since the war; and to provide for a permanent historical record of our achievements in the war.

Soldiers' Reception. Seven states, including Kansas, Iowa, Arizona, Oregon, Nebraska, Wisconsin and Wyoming made appropriations for the purpose of welcoming returning soldiers at New York, contributing to their comfort, entertainment and convenience, and in some cases providing for their transportation home.¹ The funds so appropriated were expended in most cases by an official committee of citizens appointed by and representing the governor; the Arizona fund was intrusted to the Rocky Mountain Club of New York. The funds so expended ranged in amount from \$5,000 to \$35,000 per state.¹

¹ Kansas, Session Laws, 1919, p. 380; Iowa, Session Laws, 1919, p. 388; Arizona, Session Laws, 1919, p. 7; Oregon, Session Laws, 1919, p. 251; Nebraska, Session Laws, 1919, p. 1159; Wisconsin, Session Laws, 1919, ch. 22; Wyoming, Session Laws, 1919, p. 3.

Discharge Papers. Kansas, Iowa, Oklahoma, Tennessee, Nevada, Michigan, Wisconsin, and California provide in general for the recording, free of charge or at a nominal cost, of the discharge papers of any honorably discharged soldier, sailor or marine. In Kansas such papers are filed with the adjutant general; in most other states with the county recorder or other corresponding officer. Iowa, in addition, provides that the transcript of any public record shall be furnished free of charge to any soldier, sailor, marine or his dependents. Tennessee is the only state legislating on this subject which prescribes a fee, but the record so entered is declared to be legal evidence of such discharge. Michigan and California further provide that all transcripts of records pertaining to pensions, insurance or annuities shall be made free of charge.²

Educational Facilities. A number of states gave legal expression to the handicaps experienced by soldiers who were obliged to interrupt their college courses, and made the necessary compensating provisions accordingly. Maine shortened the prescribed period of study for law students from 3 to 2 years; and Michigan made a substantially similar provision. Iowa extended to soldiers, sailors and marines who had arrived at the age of 21 school privileges for a period equal to their enlistment. Illinois provided for the awarding of scholarships free of charge in the state university and normal school to honorably discharged soldiers. Oregon created a fund out of which any soldier or sailor may be paid \$25 per month and not to exceed \$200 per year for a period of 4 years while attending a higher institution of learning. North Dakota has a similar fund and pays \$25 per month for as many months as the soldier-student was in the service. South Dakota provided that a teacher's certificate does not lapse by reason of absence in the service; and Indiana enacted a law containing similar provisions. South Dakota also provided free tuition to all soldiers attending any of the state schools. New York made certain adjustments relative to Cornell scholarships and dental students' degrees and created 450 state scholarships.³

² Kansas, Session Laws, 1919, p. 379; Iowa, Session Laws, 1919, pp. 45, 49, 74; Oklahoma, Session Laws, 1919, p. 147; Tennessee, Session Laws, 1919, pp. 414, 440; Nevada, Session Laws, 1919, p. 656; Michigan, Session Laws, 1919, pp. 432, 656; Wisconsin, Session Laws, 1919, p. 465; California, Session Laws, 1919, pp. 138, 160, 269.

³ Maine, Session Laws, 1919, p. 15; Michigan, Session Laws, 1919, p. 617; Iowa, Session Laws, 1919, p. 182; Illinois, Session Laws, 1919, pp. 922, 923; Oregon, Session Laws, 1919, p. 809; North Dakota, Session Laws, 1919, p. 398; South Dakota, Session Laws, 1919, pp. 46, 113; Indiana, Session Laws, 1919, p. 591; New York, Session Laws, 1919, pp. 790, 1204, 1602.

Memorials. Legislative activity providing for the erection of suitable memorials celebrating and perpetuating the achievements of the army and navy was pronounced. The memorials provided for include libraries, public buildings, tablets, monuments and various other designs, and authority was conferred on the state as well as local governments to erect memorials. Colorado, Delaware, Oklahoma, Alabama, Utah, North Dakota, Nevada, South Dakota, Missouri and California provided for the erection of a central memorial at the state capitol and made appropriations ranging from \$5,000 to \$500,000. Iowa, Kansas, Connecticut, Idaho, Indiana, Missouri, Tennessee, Illinois, Utah, North Dakota, Nebraska, Michigan and Wisconsin authorized cities, towns, counties or villages to appropriate money, levy a tax or submit to the electors the question of issuing bonds to provide for the erection of a memorial. Idaho and Indiana also provided state commissions to prescribe the design of local memorials, and Idaho and Missouri provided state aid for each county raising a similar amount in the construction of a county memorial. Rhode Island, New Hampshire and New York authorized certain towns to expend money in celebrations and the erection of memorials. Missouri appropriated \$25,000 for the erection of a memorial in France.⁴

Medals. Missouri, Wyoming, Oregon, Illinois, Nebraska and New York provide medals or certificates of suitable design to be awarded to all honorably discharged soldiers, sailors and marines.⁵

Burial. Connecticut, Idaho, Illinois, New Jersey, Michigan, Indiana and New York provide for the burial of indigent world war veterans at public expense.⁶

⁴ Colorado, Session Laws, 1919, p. 236; Delaware, Session Laws, 1919, p. 38; Oklahoma, Session Laws, 1919, p. 4; Alabama, Session Laws, 1919, p. 18; Utah, Session Laws, 1919, pp. 19, 355; North Dakota, Session Laws, 1919, pp. 327, 329; Nevada, Session Laws, 1919, p. 351; South Dakota, Session Laws, 1919, p. 389; California, Session Laws, 1919, p. 1139; Iowa, Session Laws, 1919, pp. 191, 193, 302; Kansas, Session Laws, 1919, p. 374; Connecticut, Session Laws, 1919, pp. 2867, 2883; Idaho, Session Laws, 1919, p. 242; Missouri, Session Laws, 1919, pp. 77, 79; Tennessee, Session Laws, 1919, p. 35; Illinois, Session Laws, 1919, pp. 66, 778, 779; Nebraska, Session Laws, 1919, p. 1031; Michigan, Session Laws, 1919, p. 563; Wisconsin, Session Laws, 1919, pp. 24, 390, 430, 501, 544, 598, 648; Rhode Island, Session Laws, 1919, pp. 227, 242; New Hampshire, Session Laws, 1919, ch. 41; New York, Session Laws, 1919, pp. 53, 965.

⁵ Missouri, Session Laws, 1919, p. 77; Wyoming, Session Laws, 1919, p. 112; Oregon, Session Laws, 1919, p. 680; Illinois, Session Laws, 1919, p. 945; Nebraska, Session Laws, 1919, p. 1029; New York, Session Laws, 1919, p. 220.

⁶ Connecticut, Session Laws, 1919, p. 2793; Idaho, Session Laws, 1919, p. 43; Illinois, Session Laws, 1919, p. 369; New Jersey, Session Laws, 1919, p. 292; Michigan, Session Laws, 1919, p. 304; New York, Session Laws, 1919, pp. 206, 773.

Soldiers' Home. Nebraska, Rhode Island, Michigan and Indiana provide for the admission of veterans of the late war to soldiers' homes on the same basis as soldiers of former wars.⁷

Tax Exemptions. Maine, Iowa, Indiana and California provide exemptions for soldiers from certain forms of taxes and tax penalties.⁸

Civil Appointments. Nine states, including Kansas, Illinois, New Jersey, Michigan, South Dakota, Wisconsin, Indiana, California and New York have given soldiers preference in all public and civil appointments, while New Jersey includes world war veterans in the list eligible to retire from the public service after a period of 20 years.⁹

Kansas provides that any person in service may become a candidate for any elective public office, notwithstanding he is absent, by filing a statement with the proper officer. Connecticut exempts from examination by the commissioner of motor vehicles any person in the military service or any auxiliary organization, and admits any honorably discharged soldier or sailor as an elector by the presentation of his certificate of discharge. Delaware and New York permit soldiers to peddle, and Indiana to hunt and fish without a license. Oregon provides a meeting place free of charge in the camps and armories of the state; Michigan provides for the incorporation of the United States World War Veterans; and repealed an act of 1891 which authorized 10 or more persons who had served in the German army to incorporate regiments or companies of the *Deutscher Landwehr-Unterstützungs-Verein*. New Jersey makes it a misdemeanor for any person not eligible to wear the badges or insignia of the veterans of the foreign wars.¹⁰ Colorado and Tennessee have designated November 11, armistice day, as a legal holiday. South Dakota has extended its moratory provision on certain debts of soldiers.¹⁰

⁷ Nebraska, Session Laws, 1919, p. 354; Rhode Island, Session Laws, 1919, p. 113; Michigan, Session Laws, 1919, p. 426.

⁸ Maine, Session Laws, 1919, p. 98; Iowa, Session Laws, 1919, pp. 240, 436; California, Session Laws, 1919, p. 305.

⁹ Kansas, Session Laws, 1919, p. 378; Illinois, Session Laws, 1919, pp. 287, 290, 292; New Jersey, Session Laws, 1919, pp. 289, 290, 599; Michigan, Session Laws, 1919, p. 402; South Dakota, Session Laws, 1919, p. 373; Wisconsin, Session Laws, 1919, ch. 18; California, Session Laws, 1919, p. 1350; New York, Session Laws, 1919, pp. 825, 844, 1793.

¹⁰ Kansas, Session Laws, 1919, p. 254; Connecticut, Session Laws, 1919, pp. 2681, 2841; Delaware, Session Laws, 1919, p. 49; New York, Session Laws, 1919, pp. 101, 891; Oregon, Session Laws, 1919, p. 574; Michigan, Session Laws, 1919, pp. 641, 730; New Jersey, Session Laws, 1919, p. 116; Colorado, Session Laws, 1919, p. 507; Tennessee, Session Laws, 1919, p. 83.

Soldiers' Aid. Of the more substantial forms of treatment accorded to the soldiers and sailors of the world war, the most notable are those providing for reemployment, rehabilitation, direct aid and soldiers' settlements which have been undertaken in a systematic way by several states. Kansas, by a legislative resolution, requested all employers to display honor flags in their establishments showing the number of men in their employ who have returned from military service to their former positions or better ones. The honor flag consists of a square field of blue with one white star for each employee reinstated and one red star for each soldier employed who was not formerly engaged.¹¹

Maine, Connecticut, California, North Dakota, Oregon, Michigan, and Wisconsin provide a direct form of aid.¹² In Maine, cities, towns and plantations are authorized to raise money by taxation or otherwise to relieve the necessitous circumstances of the dependents of soldiers, sailors and marines; not to exceed \$4 per week is paid to the wife or father or mother, not to exceed \$1.50 to each child under 16 years, and not more than \$10 for all; for the amounts so expended, the municipality is reimbursed by the state, but amounts in excess of the state allowance may be raised by the local governments. The aid provided by Connecticut for soldiers, sailors and their dependents is determined by a board of control, and corporations as well as public bodies are empowered to contribute for the war relief of soldiers and their dependents. Moreover, the state treasurer is directed to purchase the bonds or notes of the United States in any amount not to exceed 2½ million dollars, the interest on which is to be paid to organizations of soldiers for food, clothing, medical aid, care, relief and funeral expenses either of their own members or the widows and dependents of members. Oregon created a soldiers' and sailors' commission of 5 members to provide care and financial aid to soldiers and appropriated \$100,000 to carry on the work. The state of North Dakota created a returned soldiers' fund by the levy of a half mill tax to enable soldiers to procure homes or farm homes; each soldier is paid \$25 for each month he was in the service. Michigan includes world war soldiers in the relief supplied by counties. Wisconsin provides for the expenditure of \$30 per month for the relief of convalescent soldiers, a county tax to assist

¹¹ Kansas, Session Laws, 1919, p. 453.

¹² Maine, Session Laws, 1919, p. 168; Connecticut, Session Laws, 1919, pp. 2682, 2686, 3011; California, Session Laws, 1919, p. 275; North Dakota, Session Laws, 1919, p. 398; Oregon, Session Laws, 1919, p. 13; Michigan, Session Laws, 1919, p. 650; Wisconsin, Session Laws, 1919, chs. 42, 109, 345, 452, 542, 551, 699.

needy soldiers, and towns may raise not to exceed \$150 for any destitute soldier. The adjutant general is authorized to secure data as to the educational qualifications of discharged soldiers, and high school students who would have graduated but for service are given diplomas.

Missouri and New Jersey created soldiers and sailors employment commissions to secure reemployment for soldiers, and Indiana imposed a similar duty on a newly created employment bureau. Illinois requires the employees of 5 or more laborers to report between January 1 and 15 to the director of labor the number of employees who left to join the colors and the number reemployed; the director is required to investigate the reemployment of soldiers and to promote their speedy restoration to industry. Illinois, New Jersey and California made provision for the rehabilitation of the physically handicapped, by providing for their treatment in hospitals, establishing a school of rehabilitation, training them in selected occupations and securing employment.¹³

Land Settlement. One of the most important pieces of legislation was the so-called soldiers' land settlement acts which were passed in substantially similar form by Maine, Colorado, Idaho, Missouri, Tennessee, Oregon, Utah, Nevada, South Dakota, Wyoming and California.¹⁴ Coöperation is provided in all cases with the federal government in the drainage, irrigation or reclamation of lands for soldiers; the establishment of town sites, roads, schools, and churches; the advancement of loans to encourage settlement; the establishment of rural homes; and securing profitable employment. Boards were created to administer the settlement and liberal appropriations are provided.

C. K.

Americanization. The war has taught us the need of a more united people, speaking one language, thinking one tradition, and holding allegiance to one patriotism—America. The Americanization of the immigrant had been the goal of social workers for a long time, and the assimilation of our alien population has been the normal course,

¹³ Missouri, Session Laws, 1919, ch. 427; New Jersey, Session Laws, pp. 19, 138; Illinois, Session Laws, 1919, pp. 533, 534; California, Session Laws, 1919, p. 824.

¹⁴ Maine, Session Laws, 1919, p. 218; Colorado, Session Laws, 1919, p. 501; Idaho, Session Laws, 1919, p. 90; Missouri, Session Laws, 1919, p. 705; Tennessee, Session Laws, 1919, p. 520; Oregon, Session Laws, 1919, p. 550; Utah, Session Laws, 1919, pp. 249, 298; Nevada, Session Laws, 1919, p. 343; Wyoming, Session Laws, 1919, p. 242; California, Session Laws, 1919, pp. 838, 1182.

except where it has been hampered by foreign-organized and foreign-directed efforts. The surprise has been in the demonstrated loyalty of our large foreign and heterogeneous elements, but the need of more unity in our habits of thought and expression has been shown. To this end, hastened undoubtedly by the war, many state legislatures have adopted, during the past year, measures providing for the use of English only as the language for American schools and public affairs, and other laws for the promotion of loyalty and improved standards of citizenship.

The Minnesota legislature¹ has best stated the American ideal in its definition of the public school: "A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from text-books in the English language, and taught by teachers qualified to teach in the English language. A foreign language may be taught when such language is an elective or a prescribed subject of the curriculum, but not to exceed one hour in each day." In other words, as stated in Arkansas, Maine and West Virginia:² "The basic language of instruction in the common school branches" in public and private schools shall be English, but any other language may be taught as such. Illinois³ best defines the reason for making English this basic language of American schools, "Because the English language is the common as well as official language of our country, and because it is essential to good citizenship that each citizen shall have or speedily acquire, as his natural tongue, the language in which the laws of the land, the decrees of the courts, and the announcements and pronouncements of its officials are made, and shall easily and naturally think in the language in which the obligations of his citizenship are defined, the instruction in the elementary branches of education in all schools in Illinois shall be in the English language."

Other states,⁴ Colorado, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Oregon and South Dakota, provide that the English language shall be exclusively the medium of instruction in all schools, public, private, or

¹ Minnesota, Session Laws, 1919, ch. 319.

² Arkansas, Session Laws, 1919, Act 488; Maine, Session Laws, 1919, p. 147; West Virginia, Session Laws, 1919, p. 45.

³ Illinois, Session Laws, 1919, p. 917.

⁴ Colorado, Session Laws, 1919, ch. 179; Indiana, Session Laws, 1919, ch. 18; Iowa, Session Laws, 1919, ch. 198; Kansas, Session Laws, 1919, ch. 257; Nebraska, Session Laws, 1919, ch. 249; Oklahoma, Session Laws, 1919, ch. 141; Oregon, Session Laws, 1919, ch. 19; South Dakota, Session Laws, 1918, pp. 47, 48.

parochial, below the high school, and then unless the subject should be a foreign language, and that all textbooks shall be printed in the English language.

South Carolina⁵ specifically makes English the basic language of parochial schools. Indiana⁶ prohibits by name the use of German as a medium of instruction in elementary schools or any commissioned high school. Idaho⁷ makes it unlawful to teach any subject in the grades or in the high school in any language except English.

California, Rhode Island, South Dakota and Utah,⁸ with little variation in the wording of their laws, require all persons between the ages of sixteen and twenty-one who can not speak, read or write the English language, with the facility of those who have completed the fifth grade, to attend evening schools from four to eight hours a week until such ability is acquired.

Delaware and Maine⁹ make it optional with the public school authorities as to whether they will maintain such evening schools. Utah makes the state board of education the judge of the person's ability in using the English language. In Colorado¹⁰ no person who has not completed the eighth grade is permitted to attend any school where common branches are taught in any language except English while the public schools are in session.

The commissioner of education of New York¹¹ is directed to divide the state in zones and appoint teachers as may be necessary to promote and extend educational facilities to illiterates and non-English speaking persons.

Nebraska, Tennessee and Washington go yet a step further and disqualify aliens from being licensed or employed as teachers in the public schools; and Washington provides, too, that dismissal for lack of patriotic teaching bars a teacher from the schools in the state in the future.¹²

⁵ South Carolina, Session Laws, 1919, p. 206.

⁶ Indiana, Session Laws, 1919, ch. 18.

⁷ Idaho, Session Laws, 1919, p. 493.

⁸ California, Session Laws, 1919, p. 1047; Rhode Island, Session Laws, 1919, p. 212; South Dakota, Session Laws, 1919, p. 154; Utah, Session Laws, 1919, p. 285.

⁹ Delaware, Session Laws, 1919, p. 452; Maine, Session Laws, 1919, p. 148.

¹⁰ Colorado, Session Laws, 1919, p. 599.

¹¹ New York, Session Laws, 1919, p. 1620.

¹² Nebraska, Session Laws, 1919, ch. 250; Tennessee, Session Laws, 1919, p. 223; Washington, Session Laws, 1919, ch. 38.

Legal Publications. In South Dakota and Nebraska, all legal notices must be published in papers printed in the English language. Nebraska repealed an act requiring the publication of the proceedings of the board of county commissioners in a foreign language. Minnesota repealed an act authorizing certain legal publications in German newspapers. Maryland repealed a law requiring certain laws to be published in the German language.¹³

Instruction. Iowa required all public and private schools to teach American citizenship and a minimum requirement of American history and civics in the high schools. In Kansas, all elementary public, private and parochial schools must give courses of instruction in civil government, United States history and patriotism, and the duties of a citizen. New Jersey required all high schools to give courses of instruction in community civics and the problems of American democracy and all elementary schools are required to give courses in geography, history and civics of New Jersey. In South Dakota, all public and private educational institutions must give one hour of instruction each week in patriotism and in the singing of patriotic songs and the reading of patriotic addresses. Nebraska requires all private, public, parochial and denominational schools to give courses in American history and civil government, and the county or city superintendent is required to inspect private, denominational and parochial schools to see that no un-American propaganda is carried on.¹⁴

Connecticut created a department of Americanization in the board of education and any town is authorized to appoint a town director of Americanization. Delaware created a reconstruction commission of 7 members to devise plans for child welfare, community organization and other subjects affected by the change from the activities of war to those of peace. Michigan created a community council commission of 26 persons to consider all questions connected with reconstruction. Oklahoma created an Americanization committee consisting of the governor and 6 appointive members who are required to see that all school officials are informed and foreigners made aware of the opportunities of

¹³ South Dakota, Session Laws, 1919, p. 296; Nebraska, Session Laws, 1919, pp. 67, 309; Minnesota, Session Laws, 1919, ch. 118; Maryland, Session Laws, 1918, ch. 349.

¹⁴ Iowa, Session Laws, 1919, p. 536; Kansas, Session Laws, 1919, pp. 352, 367; New Jersey, Session Laws, 1919, p. 304; South Dakota, Session Laws, 1919, p. 45; Nebraska, Session Laws, 1919, p. 349.

acquiring instruction in the language, institutions and duties of American citizenship.¹⁵

Aliens. In Nebraska no alien may be appointed to or hold any public office; only natural born or fully naturalized persons are permitted to teach school; it is unlawful for any teacher to wear a denominational dress or garb in the school room; all meetings, except religious or lodge meetings, must be conducted in English; and the heads of all public institutions, sheriffs and chiefs of police are required to ascertain the name, age and nationality of all aliens in custody and report to the governor. No aliens may teach school in Michigan unless they have declared their intention of becoming citizens. In Nevada, no alien is eligible for employment in a public position and soldiers are given preference. In Colorado, California and Nevada no hunting licenses are issued to aliens, and in Tennessee all persons who teach in the public schools must be citizens.¹⁶

Flag laws enacted prohibit the desecration, mutilation or improper use of the American flag and forbid the carrying or display of the red or black flag. Laws prohibiting the desecration of the flag were passed by Arizona, Connecticut, Maine, Oklahoma and Wisconsin. Wisconsin and Tennessee require the display of the flag in schools.¹⁷ The carrying or display of the red or black flag or any ensign, symbol or standard expressing opposition or hostility to organized government has been prohibited by laws passed by Arizona, Delaware, Idaho, Michigan, Colorado, Connecticut, Alabama, Iowa, Oklahoma, Oregon, Kansas, Utah, Nebraska, Wisconsin and Indiana.

¹⁵ Connecticut, Session Laws, 1919, p. 2955; Delaware, Session Laws, 1919, p. 146; Michigan, Session Laws, 1919, p. 268; Oklahoma, Session Laws, 1919, p. 466.

¹⁶ Nebraska, Session Laws, 1919, pp. 382, 383, 991, 1018, 1020; Michigan, Session Laws, 1919, p. 392; Nevada, Session Laws, 1919, pp. 296, 297; Colorado, Session Laws, 1919, p. 416; Tennessee, Session Laws, 1919, p. 223.

¹⁷ Alabama, Session Laws, 1919, p. 767; Arizona, Session Laws, 1919, pp. 8, 11; Connecticut, Session Laws, 1919, pp. 2703, 2829; Delaware, Session Laws, 1919, p. 615; Idaho, Session Laws, 1919, p. 360; Iowa, Session Laws, 1919, p. 219; Maine, Session Laws, 1919, p. 156; Michigan, Session Laws, 1919, p. 179; Kansas, Session Laws, 1919, p. 244; Nebraska, Session Laws, 1919, pp. 186, 916; Oklahoma, Session Laws, 1919, pp. 113, 133; Oregon, Session Laws, 1919, p. 49; Colorado, Session Laws, 1919, p. 573; Utah, Session Laws, 1919, p. 350; Indiana, Session Laws, 1919, ch. 125; Tennessee, Session Laws, 1919, p. 579; Wisconsin, Session Laws, 1919, chs. 113, 125, 369.

Syndicalism. Eight states, most of them west of the Mississippi (Iowa, Michigan, Nebraska, Nevada, Oklahoma, Oregon, South Dakota and Utah) have passed laws which define and provide penalties for criminal syndicalism and sabotage.¹⁸

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War History Records. In at least thirty-five states special provision has been made for collecting and compiling all available records relating to the part they played in the world war. The work was originally sponsored either by the state councils of defense, acting upon the request made early in the war by the National Board for Historical Service, or by state historical societies and historical commissions.

Under the stress of war time conditions and without any official recognition on the part of the states, the work had to be carried on for several months as best it could. As the scope of the work broadened, however, its importance was quickly recognized, and when the state legislatures convened in January, 1919, eighteen states made special provision for enlarging the activities of the historical work, and voted funds for this purpose.

The following appropriations were made in the states mentioned: The State Historical and Natural History Society of Colorado, \$5000; the department of war records of the Connecticut State Library, \$10,000; the Illinois State Historical Library, \$20,000; the Indiana Historical Commission, \$20,000; the Iowa War Roster Commission, \$20,000; the Michigan Historical Commission, \$45,000; the Minnesota War Records Commission, \$10,000; the war history bureau of the New Jersey State Library, \$10,000; the Adjutant General of Nebraska, \$10,000; the North Dakota War History Commission, \$2,500; the Adjutant General of Ohio, \$50,000; the State Historian of Oregon, \$2500; the Wisconsin War History Commission, \$37,500.

Special appropriations were also provided for this work—the exact amount not stated—to the Adjutant General of Massachusetts, the Nevada Historical Society, the State Historian and Adjutant General of New York, and the North Carolina Historical Commission. In

¹⁸ Iowa, Session Laws, 1919, p. 493; Michigan, Session Laws, 1919, p. 452; Nebraska, Session Laws, 1919, p. 1058; Nevada, Session Laws, 1919, p. 33; Oklahoma, Session Laws, 1919, p. 110; Oregon, Session Laws, 1919, p. 25; South Dakota, Session Laws, 1919, p. 43; Utah, Session Laws, 1919, p. 347.

Texas the work is being financed by the state university, \$12,500 having been set aside for this purpose.

The scope of the work as outlined in most of the states provides for compiling a roster of all men that were in the service, the collection and cataloging of all original records such as the correspondence and reports of the state councils of defense, the Liberty Loan drives, Red Cross work, the records of the Food and Fuel Administrations, and other organizations engaged in war work.

In addition to the work of collecting the original war records, provision has been made in several of the states to publish one or more volumes giving the history of the state during the war period. The greater part of the actual publication work however, will have to be deferred until additional state aid has been provided.

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FOREIGN GOVERNMENTS AND POLITICS

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Electoral Reform in France and the Elections of 1919.¹ Unusual interest attaches to all of the continental elections of recent months—the first to be held after the long postponements caused by the war; but the elections in France derive special importance from the new electoral law of July 12, 1919, under which they were held.

After a nine-year contest, the elements which have demanded *scrutin de liste*, or election on a general departmental ticket, instead of *scrutin d'arrondissement*, or election by small districts, have come off victorious. Each of the two systems prevailed at various times during the Restoration, the Second Republic, and the Second Empire. Upon the establishment of the Third Republic, the *scrutin d'arrondissement* was decided to be the more satisfactory method, and it was maintained until the ministry of Gambetta. The great-souled statesman from the Midi believed that the *arrondissement* method tended to petty politics, and succeeded in imposing upon the country the list system with the department as the unit. Unfortunately, the system did not at this time have an opportunity to show its worth, for it lasted only four years, i.e., from 1885 to 1889. The Boulanger affair so aroused the government that in self-defense it brought about a return to the *arrondissement* plan. For, as an English publicist declared, "if the *scrutin de liste* did not lay the egg of Boulangism, it helped to hatch it."

Not until 1907 did agitation for electoral reform again assume such proportions as to lead the Chamber of Deputies to set up a committee to consider the question. This committee reported a scheme which combined the *scrutin de liste* with a plan of proportional representation. In 1909 the chamber passed a resolution favoring the establishment of both *scrutin de liste* and proportional representation; but no law on the subject was enacted. The Briand ministry of 1910 outlined a program

¹ The text of the electoral law of July 12, 1919, is printed in the *Revue Politique et Parlementaire*, August 10, 1919; the *Guide de l'Electeur*, a circular issued by the minister of interior in explanation of the law, in *Le Temps*, November 6, 1919.

embodying the two proposals; and in the ministerial declaration the premier declared that the electoral area must be broadened so that the interests of the nation might be made to predominate over those of the district; and that while in a democracy the majority must rule, the government was favorable to proportional representation in so far as the adoption of that principle could prevent the suppression of really important minorities. The Monis and Caillaux cabinets were both short-lived, and their energies were absorbed by the German *coup* at Agadir.

The Poincaré ministry obtained a favorable vote on the question in the chamber, and the new Briand ministry formed at the election of M. Poincaré to the presidency attempted to force the bill through the senate. Under the leadership of MM. Clemenceau and Combes, the upper chamber, however, refused to pass the measure; and the downfall of the Briand ministry resulted on this question in February, 1913. The Barthou cabinet gave its best efforts to the enactment of the three-year service law, and before it had a chance to turn its attention to electoral reform it gave way to the Radical-Socialist ministry of Doumergue. This cabinet was less favorably disposed to the idea; and since the elections were coming on, nothing further was done. In the elections of April, 1914, the issue was clearly before the country, and the results unmistakably indicated the people's desires. Over five million votes were cast for candidates who were known to be in favor of electoral reform, and 378 deputies out of 502 promised their constituents to support an electoral reform bill embracing proportional representation.

An inevitable effect of the outbreak of the great war was to push the question into the background, and not until the spring of 1919 was the issue again raised. The "proposition Dessoie," a bill for electoral reform embracing the *scrutin de liste* and a system of proportional representation, came before the chamber, and passed, April 18, 1919, by a vote of 277 to 138. However, it was the senate that had opposed the issue before, and it was known that there was still a strong current of opposition in that body. The upper chamber, however, no longer dared resist the perfectly plain popular mandate, and the bill passed with some modifications on June 26. There were 134 votes in favor and 87 opposed. Rather than prolong the discussion, the chamber accepted the senate bill unchanged, and on July 8, by a vote of 328 to 103 (71 not voting), the measure became law. M. Aristide Briand, who had so long fought for electoral reform, made the final speech in

favor of the bill. "I would not go so far as to say," he declared, "that if the *scrutin d'arrondissement* should be maintained the republican régime would be imperilled. But with a *scrutin* less personal, based upon a larger circumscription, we shall have a broader and more elevated policy. . . . It is imperative that the electorate of France rise above the petty quarrels of yesterday to envisage the great questions upon whose solution depends the restoration of our country."

The new law consists of nineteen articles and may be summarized as follows: Each department elects a deputy for every 75,000 inhabitants of French nationality (a major fraction giving a right to an additional deputy), and each department elects at least three deputies. The present departments were to be the basis for the first elections; but thereafter every department electing more than six deputies must be divided into circumscriptions each electing at least three deputies. No person may be a candidate in more than one district. Candidates are to be grouped, on a party basis, in lists; every one must sign a declaration duly legalized; and no list may contain names in excess of the number of seats to be filled. Every isolated candidate is considered as forming a separate list. Each candidacy must be supported by the signatures of at least one hundred electors of the district, and the lists must be deposited at the prefecture at least five days before the election. Two days before the vote is taken the names of the registered candidates must be posted on the voting booths by the prefectural authorities.

The method of determining the results of the election is very complicated, and the minister of the interior has issued an explanatory bulletin, which has been made the basis of the explanation here given. In the first place, all candidates obtaining an absolute majority of the votes cast are declared elected, up to the number of seats to be filled. If seats still remain unfilled, they are apportioned after the following method: (1) the *electoral quotient* is obtained by dividing the number of votes cast in the electoral area by the number of deputies to be elected, after deducting all unmarked or incorrectly marked ballots; (2) the *average* of each list is obtained by dividing the total number of votes cast for all the candidates on that list by the number of candidates on that list; (3) each list receives seats according to the number of times the electoral quotient is contained in its average; and (4) in each list the seats are allotted to the candidates who have received the largest votes.

To illustrate, let us take a department which is to elect six deputies, and whose total number of voters is 60,240. All candidates receiving as many as 30,121 votes, i.e., an absolute majority of the whole vote cast, are forthwith declared elected, up to the number of seats to be filled. To ascertain which other candidates have been successful (if any seats remain), we must apply the *electoral quotient*. Dividing the *total vote* by the number of deputies to be elected, we find the electoral quotient to be 10,040. Let us suppose that four lists, A, B, C and D, are presented, with the following results:

	A	B	C	D
Candidate 1.....	32,645	18,125	15,247	5,164
Candidate 2.....	29,827	16,247	14,629	4,032
Candidate 3.....	29,640	15,822	12,172	3,292
Candidate 4.....	25,274	12,659	8,624	1,123
Candidate 5.....	18,401	8,404	6,018	1,119
Candidate 6.....	12,524	4,031	5,101	1,082
Totals.....	148,311	75,288	61,791	15,812
Average.....	24,718	12,547	10,298	2,635

It is evident that the first candidate of list A is elected, because he has an absolute majority of all the votes cast. Thereafter, each list will receive as many seats as its average contains the electoral quotient, i. e., list A will receive two seats, since its average contains the electoral quotient twice; list B will receive one seat; list C will receive one seat; and list D will receive none. Four seats have thus been allotted by the proportional method, and one has been obtained by absolute majority. But the department is allowed six seats; and the final one is accorded to the list having the largest average, namely, list A.

After the seats are thus assigned to the lists, they are assigned to the candidates in each list in accordance with the number of votes they have individually received. Thus in our example the first, second, third and fourth candidates of list A, and the first candidate of list B and list C would be elected. In case of a tie within a list, the eldest candidate gets the seat.

The law prescribes that no candidate may be declared elected unless his vote is greater than one-half of the average of the list to which he belongs. Furthermore, if the number of persons voting is not greater than one-half of the number registered, or if no list obtains the elec-

toral quotient, no candidate is to be declared elected. Under these circumstances a new election must be held two weeks later; if in this election no list obtains the electoral quotient, the seats are assigned to the candidates receiving the largest vote. However, it can readily be seen that it is the purpose of the law (and the results at the recent elections have justified the expectations) to reduce the *ballotage*, or second balloting, to a minimum.

Although the law makes drastic changes, the new scheme is still far from an exact system of proportional representation, such as that identified with the name of Hare; and it remains to be seen whether it is superior to the Belgian list system, whose faults it is supposed to remedy. The law tends to strengthen the party at the expense of the individual, to force small groups to combine, and to encourage the elector to vote a straight ticket.

Efforts were made to combine the anti-Socialist vote on one list of candidates in each district, representing the *Bloc National Republicain*; and in many districts such a list representing a combination of Republican groups was arranged. But in a considerable number of districts there was more than one list bearing a title which indicated such a union; and generally there were at least two, and often as many as three or four, lists of Republican candidates for one district. At the same time there were not infrequently two or more lists of Socialist candidates.

At the elections on November 16, 1919, there appears to have been a substantial increase in the total Socialist vote, from 1,400,000 in 1914 to 1,700,000 in 1919. But under the new law the result was a very decided victory for the moderate group, especially the *Bloc National Republicain*. The Progressives and Republicans of the Left gained about 100 members; while the Socialist Radicals lost more than 80 seats and the Socialists about 40. In Paris, the Unified Socialists obtained only 10 seats out of 54. In one Paris district the *Bloc National Republicain* elected the entire 14 members, with an average of 150,000 votes, although the Unified Socialist list had an average of 112,000 votes.

M. Clemenceau, who has consistently opposed proportional representation on the ground that the foundation of democratic government is the clearly defined formula of action of a well-established majority—and who in his notable Strasbourg speech of November 6 asked if this was the hour “to fabricate in an incoherence of votes, such as has never before been seen, an electoral system whose avowed end is to reduce the majority for the benefit of minorities, some of whom are outspoken in their destructive tendencies”—has been most agreeably disappointed.

The extremists of the Socialist parties and candidates who had shown bolshevist tendencies were entirely kept out of the new chamber. Probably the most noteworthy defeat in the election was that of M. Jean Longuet, leader of the Socialist Extreme Left. Among the eminent Radical Socialists to go down to defeat were M. Messimy, former minister of war, and M. Franklin-Bouillon, chairman of the foreign relations committee of the last Chamber, who urged rejection of the peace treaty.

M. Briand, one of the best-known leaders of the Republican majority, and one who has been talked of as a possible successor to M. Clemenceau, carried his list to an overwhelming victory. His program may well be considered the majority program of the new chamber. It affirms the advisability of modifying the constitutional laws so as (1) to provide for the election of the President of the Republic on a wider basis; (2) to introduce constitutional guaranties against confusion between legislative and executive powers, but at the same time to allow the President to play a larger and more important rôle; (3) to reduce the amount of paper money in circulation; (4) to eliminate all taxation hindering production; (5) to modify all rigid departmental rules interfering with the rapid rehabilitation of the devastated areas. The program promises a study of the labor problem from the viewpoint of both masters and men. The lists headed by Captain André Tardieu, former High Commissioner to the United States; M. Georges Mandel, confidential private secretary to M. Clemenceau, and M. René Viviani, former premier, were also returned with heavy majorities. Among other notable men who were elected are M. Albert Lebrun, former minister of blockade and the invaded regions (the position held at present by M. Tardieu); M. André Lefevre, former minister of finance; Captain René Fonck, the aviator; M. Leon Daudet, leader of the Royalist Association, and General Castelnau.

The new chamber contains 626 deputies, and over half of its number have been elected for the first time. Eighty-three members of the old chamber were killed in battle, and a large number of the others did not enter their names for reëlection. Among the noteworthy features of the installation of the new chamber was the reappearance, after forty-eight years, of deputies from Alsace-Lorraine. The first session of the new chamber, on December 8, was, however, the occasion, not only of a rousing welcome to the twenty-four deputies from the regained provinces, but also of a vociferous demonstration against the Socialists. It was only after a quarter of an hour of loud jeering that M. Albert

Thomas was able to read the Socialist declaration. The chamber voted to placard throughout France the speeches of Premier Clemenceau, Deputy Siegfried (the oldest member of the chamber), and M. François (the youngest member), who spoke for Alsace-Lorraine, while it completely ignored the speeches of the Socialist orators, MM. Thomas and Varenne.

Early in January elections were held for the Senate by the departmental and municipal councils, to fill the seats of two-thirds of the members whose terms had expired, and other vacancies caused by deaths and resignations. These also resulted in a decided victory for the moderate groups, although the Socialist party, for the first time, is represented in the upper chamber.

The regular election for President of the Republic, by the national assembly of both chambers, was held on January 17. M. Clemenceau, whose retirement from the ministry was expected, allowed his name to be presented; but he was defeated in a close vote, at the preliminary caucus, by M. Paul Deschanel, president of the chamber of deputies; and at the formal election M. Deschanel was chosen by a large majority.

This was followed by the resignation of the Clemenceau cabinet; and a new cabinet was installed, with M. Millerand as prime minister.

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Swedish Parliamentary Elections, 1919. The elections to the upper chamber of the Swedish Riksdag, in July, 1919, cannot claim any large share of the world's attention. None the less, being the first parliamentary elections in any of the neutral European countries since the armistice, they have some interest as an indication of the political temper of the northern neutrals at the close of the war.

The 150 members of the upper chamber are elected for a term of six years by the county councils (*Landstings*) of the 25 counties (*Läns*), as well as by the councils of the larger towns. The members of the local councils are popularly elected under a system of proportional representation, and the same system is, in turn, used by the members of the local councils in choosing the members of the upper branch of the Riksdag. The constitution provides for overlapping terms, with one-sixth of the members of the chamber elected each year. In the early summer of 1919, however, the king exercised a prerogative seldom used, and, because of its opposition to the eight-hour day, dissolved the

upper house, thus making necessary an election of the entire membership at one time. The chamber when dissolved consisted of 86 Conservatives, 43 Liberals, 19 Social-Democrats, and 2 Left Socialists. The new house is made up of 39 Conservatives, 10 representatives of the new Peasants' Alliance, 8 members of the new Farmers' National Alliance, 41 Liberals, 48 Social Democrats, and 4 Left Socialists. No elections were held for the lower house, and its membership continues to consist of 71 Conservatives, 68 Liberals, and 97 Social Democrats. The present ministry, with Nils Eden as premier, rests upon a coalition of the Liberals and the Social Democrats.

The matters of principal interest in connection with the elections are the workings of the proportional representation system, the increased strength of the Socialist groups, and the growth of the farmer parties. The Swedish form of proportional representation is the familiar list system, except that the voter may include any candidate under any party label. Ballots having no party indication are regarded as forming a distinct group known as the free group. The seats allotted to a constituency are divided among the groups according to the d'Hondt rules, and the seats won by each group are distributed among the candidates in the group in accordance with the principles of proportional representation. Detailed figures gathered from Swedish dailies¹ of July 12 to 29 furnish the complete returns for 21 *läns* outside of Stockholm, and show that the elections resulted in a distribution of the seats in the chamber almost exactly in the same proportion as the members of the several *Landstings* are distributed among the various parties. The following table shows how well the system of proportional representation worked in this election, at least as far as 21 *läns* are concerned.

	CONSERVATIVES	PEASANTS' ALLIANCE	FARMERS' NATIONAL ALLIANCE	LIBERALS	SOCIAL DEMOCRATS	LEFT SOCIALISTS	TOTAL
Distribution (in percentages) of members of 21 <i>Landstings</i>	27	7	7	27	25	7	100
Distribution (in percentages) of seats from 21 <i>läns</i> in the new chamber	26	8	7	27	27	5	100

The Socialist and the Liberal percentages would, of course, be higher, and the Conservative percentages lower, if the figures from Stockholm and other cities were included.

¹ *Dagens Nyheter* and *Folkets Dagblad Politiken*, both of Stockholm.

The Social Democratic gains, which were made almost entirely at the expense of the Conservatives, are most striking. In the 21 *län*s studied, the only instance of a decrease in the Social-Democratic representation was in Norrbotten. But even there the loss was not to the older parties, but to the Left Socialists. The Left Socialists have an independent organization and are supporters of the Third International Socialist Congress.

The agricultural classes have been without direct party representation since the fusion of the Agricultural party with the Conservatives several years ago; and the two new parties—the Peasants' Alliance and the Farmers' National Alliance—are manifestations of the desire of the farming classes for political expression. The two organizations have essentially the same program; they remain separate apparently because of the inability of the leaders to coöperate. They are agreed that the aim of the agrarian movement is to awaken the agricultural classes to the need of united action in order to protect the interests of the food producers, and thereby to promote the general welfare of the country and strengthen the foundations of society.² The attitude of the Agrarians toward the Social Democrats is similar to the attitude of the farmers' parties to labor parties the world over; that is, one of suspicion and almost open hostility. The Socialists are demanding the socialization of the land, and on this question, as well as on most others, the Agrarians will vote with the Conservatives. There is little hope in Sweden of coöperation between the agricultural and labor groups, in spite of the fact that they have many common interests.

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² Stockholm letter to *Nordstjernen* (New York).

NOTES ON INTERNATIONAL AFFAIRS

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The Treaty of Peace with Austria. In drafting the treaty of peace with Austria, the allied and associated powers, though enabled to apply most of the principles and incorporate many of the provisions of the treaty with Germany, found themselves confronted with preliminary problems somewhat different from the difficulties attending their earlier deliberations. In the case of Germany, though her rulers had abdicated and the stability of the new government was imperilled by internal disorder, yet it was upon a state still tolerably coherent that the Peace Conference could impose its terms. The armistice had indeed been concluded after a military decision; in a sense, Germany had been beaten to her knees. But her vast dominion had not felt directly the ravages of the war. With the lifting of the blockade and the importation of raw materials, her industries would readily revive. Her territorial integrity was substantially intact. The population was homogeneous; no bonds could be stronger than their common speech and traditions; while much of the old sympathies and allegiance survived, favoring if not the Empire, at least a German Republic.

But once the armistice had discredited the military and political power that held the Austro-Hungarian Empire together, that artificial structure was not long in succumbing to inherent forces of disruption. With the removal of the monarch, the dynastic tie was gone; and besides this bond, imperial unity had depended chiefly on the power of repression. It was to be expected that a state, embracing the remnants of so many kingdoms and principalities loosely strung together and inhabited by men so diverse in race, speech and culture, should burst violently asunder the moment the sole barrier to dismemberment, the restraining hand of the ascendant races, began to lose its international prestige. The desire for self-determination, long acutely felt, found its opportunity and asserted itself on all sides. Instead of the single imperial entity that had accepted the armistice negotiations, the Peace Conference faced an empire in dissolution and found itself apportioning

the scattered fragments among some seven autonomous kingdoms and republics.

In dictating terms to Germany, the foremost necessity had been to exact the fullest measure of reparation that her promise of industrial revival could bear, and to insure such effective disarmament that Europe might escape the nightmare of another aggression at least for a generation to come. But after the dismemberment of Austria-Hungary, the possibility of adequate reparation for her transgressions had dwindled almost below computation; and though the rise of so many new and ill-consorting states by no means guaranteed the peace of Europe, the military menace of the Hapsburgs had vanished forever. Hence, in liquidating the confused affairs consequent upon this disruption, the most pressing problems were the delimitation of what was left of the Austrian state as such, the regulation of its relations to the new states arising on its ruins, and the disposal of the former Empire's non-European possessions. With the identity of the new Austrian state thus clearly established, the question of reparations could be solved after a study of its resources by a commission, and securities against future disorder were available through disarmament on principles already adopted by the Peace Conference in dealing with the German situation.

The Austrian treaty follows the same outline as the German, and in many places is identical, except for the change in names. The preamble, however, is more detailed than in the German summary; it frankly ascribes the origin of the war to the former Austro-Hungarian government, and further intimates that, as that monarchy has now ceased to exist, its obligations must be assumed by its successor, the Austrian Republic. In their counter-proposals to the draft treaty, the Austrian delegates objected that, in view of the dissolution of the Austro-Hungarian monarchy, Austria ought not to be treated as an enemy state at all; and that, in consequence, she ought not to be made in any special way inheritor of the obligations in regard to reparation, to which the Austro-Hungarian monarchy would be liable, did it still exist.

To this "fundamental misconception," the conference, in its covering letter accompanying the final terms, replied that the war had been precipitated by the Austro-Hungarian ultimatum to Serbia, requiring the acceptance of demands which involved a virtual surrender of its independence; that this ultimatum was no more than an insincere excuse for beginning a war for which the late autocratic government at

Vienna, in close association with the rulers of Germany, had long prepared, and for which it considered the time had now arrived; and that the then Austro-Hungarian government, refusing all offers of a conference of conciliation on the basis of Serbia's reasonable reply, had immediately opened hostilities against Serbia, thereby deliberately setting light to a train which led directly to universal war. For these misdeeds of a government which was their own and which had its home in their capital, the people of Austria could not now escape responsibility: they had never endeavored to cure the militarist and domineering spirit of the Hapsburgs; they had made no effective protest against the war; they had not refused to assist and support their rulers in its prosecution; the war had been acclaimed on its outbreak in Vienna, the people of Austria were its ardent supporters from start to finish and they did nothing to dissociate themselves from the policy of their government and its allies until they were defeated in the field.

In the preamble and throughout the treaty, Austria is recognized under the name of the "Republic of Austria." In the counter-proposals, the Austrian delegates, with an eye to annexation possibilities then under discussion at Vienna, constantly speak of "German Austria." To this designation, the Allies' note demurred, and insisted on the adoption of the term they had imposed. To frustrate the campaign for annexation and a "Greater Germany," a specific article in the treaty makes the independence of Austria inalienable otherwise than with the consent of the Council of the League of Nations and obligates Austria, in the absence of such consent, to abstain from any act which might directly or indirectly compromise her independence.

The text of the treaty comprises 381 articles. As in the case of the German instrument, it includes as its first integral part the League of Nations covenant, which Austria agrees to accept, though it is only by a subsequent vote of the other members that she can be admitted to the league.

With an illustrative map, the second part of the treaty delimits the boundaries of the new Austria in detail. The western and north-western frontiers facing Bavaria and the western frontier facing Switzerland and Lichtenstein remain unchanged as of August 3, 1914. Cessions of territory require minute demarcation in the case of Czechoslovakia, Italy, the Klagenfurt area, the Serb-Croat-Slovene state and the Hungarian Republic. To give effect to the treaty descriptions, joint boundary commissions, composed of a majority appointed by the

disinterested Allies, and one member each by Austria and the other state concerned, are created by the treaty and empowered to trace these boundaries on the ground; to these commissions, the various states interested undertake to furnish all necessary information.

The northern frontier facing Czechoslovakia follows the existing administrative boundaries formerly separating the provinces of Bohemia and Moravia from those of Upper and Lower Austria, subject to certain minor rectifications, notably in the regions of Gmünd and Feldsberg and along the river Morava. In defining this boundary, the Allies tried to secure to Czechoslovakia a complete system of communications, and therefore departed from the historical frontier of Bohemia to assure west and east communications to southern Moravia, and in the Gmünd region to give Bohemia a junction of the two large railroad lines that constitute its chief channels of trade.

The frontier with Italy begins at the Reschen Pass on the Swiss frontier and follows in general the watershed between the basins of the Inn and the Drave on the north and the Adige, Piave and Tagliamento on the south. This line, which runs through Brenner Pass and the peak of the Signori (*Dreiherrnspitze*), includes in the Italian frontiers the valley of Sachsen and the basin of Tarvis. East of the Tarvis region, the Austrian frontier follows the Karawanken Mountains to a point southeast of Villach, then runs north of the Worthersee, the towns of Klagenfurt and Volkersmarkt, thence along the north of the Drave in such a manner as to leave to the Serb-Croat-Slovene state the town of Marburg and to Austria Radkersburg, just to the north of which latter place the line will join the Hungarian frontier.

The disposition of the Klagenfurt basin, which lies to the south of this line, will be determined by plebiscites to be organized in two zones of that area under a joint commission within three months after the treaty comes into effect. In case a majority of the population votes for union with Austria, the southern frontier of Austria will continue along the Karawanken Mountains to a point southeast of Eissenkappel, thence northeast, passing east of Bleiburg, traversing the Drave just above its confluence with the Lavant, and then rejoin the frontier already traced.

In the first draft of the treaty, the eastern frontier facing Hungary was left unchanged. In deference, however, to vigorous representations on the part of Austria, the conference finally concluded that the Odenburg region of Hungary should, chiefly on ethnological grounds, as its population of several hundred thousands is preponderantly

German, be included within the Austrian frontier. Accordingly, the old administrative boundary, from a point west of Pressburg, was projected south through the Neusiedler See and thence southwest until it hits the historic frontier north of Hartsberg. With respect to the more northerly portion of the boundary between Austria and Hungary, the Allies desired to guarantee access to the sea for the Czechoslovak state and therefore provided that Pressburg should have such access assured by transit across Hungarian as well as Austrian territory.

Thus by the recognition of the independence of Czechoslovakia and the Serb-Croat-Slovene state, and by the cession of other territories which previously formed part of the Austrian Empire, Austria is reduced to a state of six or seven million people inhabiting a territory of five or six thousand square miles.

Of the "gross injustice" of this dissolution and distribution, the Austrian delegation, warmly supported by the national press, made bitter complaint, particularly as to Bohemia, Western Hungary, Styria, Southern Carinthia and the Tyrol. The loss of her industries, Austria could never survive. They urged further the perilous responsibility assumed by the Entente in subjecting "four and a half millions of German Austrians to foreign domination." The Austrian Chancellor, Dr. Karl Renner, specifically declared that the partition "would create another hotbed of war such as the Balkans have been."

So carefully, however, had the experts of the allied powers, in tracing the boundaries of the future Austrian republic, weighed every historical, geographical, ethnological, economic and political consideration—so states the covering letter of the Allies accompanying the revised version of the terms—that the only concessions that could be accorded to the numerous objections and counter-proposals were the Odenburg region, mentioned above, and the return to Austria of Radkersburg which the tentative draft had included within the Serb-Croat-Slovene frontier. Defending the cession to Italy of parts of the Tyrol, the powers replied that they had been impressed by the fact that for decades the Italian people had suffered from a menace deliberately directed at their heart by the retention in Austro-Hungarian hands of military outposts commanding the Italian plains, and hence they had thought it best to accord to Italy the natural frontier of the Alps, which she had so long demanded.

In this decision, it is worthy of remark, the principle of self-determination, so prominent throughout the peace negotiations, seems de-

liberately disregarded, the prospective functions of the League of Nations and its guaranty of territorial integrity are overlooked, and the conference takes a backward step in the renewed emphasis on strategic military frontiers. On this whole matter of partition, it is a grave question of statesmanship whether the cause of European peace has been advanced by the Conference's official recognition of the absolute independence of the new states already given over to rivalry and mutual suspicion. It is believed by many that it might have been possible to devise some practicable scheme of federation with local autonomy for the several states. In the absence of a centralizing influence the present settlement perpetuates the animosity between Teuton and Slav, and creates another Balkan problem in the center of the European world.

In a series of constructive measures, denominated "Political Clauses" in the treaty and designed to establish the new order in Europe, Austria recognizes and accepts the frontiers of Bulgaria, Greece, Hungary, Rumania, the Serb-Croat-Slovene state and the Czechoslovak state as at present or ultimately determined by the Allies. In favor of the Allies, too, she renounces all her rights and titles over territories formerly belonging to her which, though outside the new frontiers of Austria, have not as yet been assigned to any state. She recognizes further the complete independence of the Czechoslovak state, including the autonomous territory south of the Carpathians, of the Serb-Croat-Slovene state, and of all territories which formed part of the former Russian Empire. Austria accepts definitely the annulment of the Brest-Litovsk treaty, of all treaties and agreements concluded with any Russian governments or political groups since the revolution of November, 1917, and of the treaties of 1839, by which Belgium was established as a neutral state and her frontiers fixed. Austria likewise adheres to the abrogation of the neutrality of the Grand Duchy of Luxemburg, and consents in advance to all international agreements reached as to it, together with all the arrangements made with Germany concerning the territories whose abandonment was imposed on Denmark by the treaty of 1864.

To the protests of the Austrian delegation against the provisions governing their relations to the new states, the allied and associated powers contended in reply that the dissolution of the monarchy and the consequent disabilities which Austria must endure were the direct outcome of that fatal policy of domination, a system for maintaining the ascendancy of the German and Magyar peoples over a majority

of their fellow-subjects, for which the people of Austria were themselves to blame. "This policy," said the Allies, "led to those irredentist movements along the frontiers of Austria and Hungary which kept Europe in a ferment of unrest. It led to the growing dependence of Austria-Hungary on Germany, and consequently to the subordination of the Austro-Hungarian policy to the German plans for domination. . . . The policy has borne its inevitable fruit in the fact of partition, and it is this partition that lies at the root of Austria's troubles to-day."

In the Austrian treaty, the problem of reparations, in view of her obvious inability to pay in full, sinks to somewhat secondary importance. Austria accepts, as a matter of course, the responsibility of Austria and her allies for causing the loss and damage to which the allied and associated governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria-Hungary and her allies by land, by sea and from the air. But the treaty recognizes that her resources are not adequate, after taking into account the permanent diminution of such resources resulting from the creation of new states and from other provisions of the treaty, to make complete reparation. Bearing in mind these disabilities, the Austrian subsection of the inter-allied reparations commission will notify Austria before May 1, 1921 of the extent of her liabilities and of the schedule of payments for the discharge thereof during thirty years. As immediate reparation, Austria shall pay during 1919, 1920 and the first four months of 1921 "a reasonable sum which shall be determined by the commission." At stated intervals, three bond issues are to be made and the amounts divided by the Allies in equitable proportions determined upon in advance.

Recognizing the right of the Allies to ton-for-ton replacement of all ships lost or damaged in the war, Austria agrees to deliver within two months to the reparations commission all merchant ships and fishing boats belonging to nationals of the former empire, together with 20 per cent of her river fleet. In part reparation, she must devote her economic resources to the physical restoration of invaded areas, and, where injured governments so desire, animals, machinery and other equipment destroyed by Austria must, according to her ability, be replaced in kind. As an immediate advance, specified numbers of live stock, milch cows, heifers, bulls, calves, bullocks, sows, draft horses and sheep must be delivered to Italy, Serbia and Rumania within three months after ratification. Provision is also made for the

claims of invaded or ceded territories to records, documents, works of art, scientific material and the historic possessions of the Austro-Hungarian Crown. As for certain specified artistic treasures, spoils of past wars of the House of Hapsburg, a special committee of three jurists is to decide the question of restitution.

By way of further reparation, Austria must pay the total cost of the armies of occupation so long as maintained and, without consent of the reparations commission, no gold may be exported before May 1, 1921. The Austro-Hungarian pre-war debt, specifically secured on railways, salt mines and other property, is distributed among all the states arising out of the dismemberment on the basis of the value of the property transferred. The unsecured pre-war bonded debt is to be similarly assumed by all the states, in the ratio their revenues for the three years before the war bore to those of the whole empire, excluding Bosnia and Herzegovina. Except for war-debt bonds held by nationals of the separated territories, Austria alone assumes the entire war-debt of the former government. All currency notes of the former Austro-Hungarian bank are to be withdrawn from circulation in the separated territories and redeemed by the reparations commission in the immediate liquidation of the bank. Each state acquires title to all former royal and government property located within its borders, and the assessed value thereof is to be credited to Austria on the reparation account. Similar property of predominantly historic interest and associations may be transferred without payment. Besides surrendering sundry financial advantages in the surrounding states, Austria agrees to deliver to the Allies the gold deposited as security for the first issue of Turkish currency notes; she foregoes all benefits accruing from the Bucharest and Brest-Litovsk treaties, and renounces in favor of the allied and associated governments all other claims against her former allies.

In the matter of punitive reparation, the section on penalties is reproduced from the German treaty except that, instead of demanding the trial of the former Kaiser, specific provisions require the coöperation of the new states in the prosecution before Entente tribunals of any of their nationals charged with crimes against the laws and customs of war.

As security against future military aggression, and as part of a universal plan "to render possible the initiation of a general limitation of the armaments of all nations," the Austrian army is to be reduced within three months to thirty thousand men, and compulsory military

service is supplanted by voluntary enlistment. All officers must be regulars, those newly appointed engaging to serve at least twenty consecutive years; and a twelve-year enlistment is required of all noncommissioned men. Munitions of war may be neither imported nor exported, and the domestic manufacture of war-materials is restricted to a single factory under control of the state. The naval and air forces are practically wiped out. The treaty prescribes the scrapping of all vessels of war under construction; submarines, even for commercial purposes, are proscribed. For three months after the conclusion of the treaty, the Allies will exercise supervision over even the commercial use of the high-power wireless station at Vienna. Besides the immediate demobilization of all existing aerial forces, wide categories of naval and aviation material are declared surrendered to the Allies, and henceforth no Austrian national may enlist in the army, navy or air service of any foreign power.

For further immediate realization of the disarmament ideal, apart from the promise of general disarmament incorporated in the covenant of the League of Nations, the Council of Four had already fixed in the first draft of the Austrian treaty the relative strengths of the armies which all the eastern states inheriting parts of the Hapsburg monarchy should maintain. This restriction evoked a vehement protest from the lesser states. The Jugoslavs in particular asserted that it was unfair to limit their armaments and yet leave their great rival, Italy, with complete freedom in this respect. The Poles, who were firmly convinced that they might be compelled at no distant date to defend their independence, did not wish to see themselves and their natural allies restricted in the means of defense, and they also demanded the elimination of this provision. In compliance with this demand, the limitation, so far as it affected all the states but Austria, was withdrawn by the Entente powers.

In the principles incorporated for the protection of minorities, Austria acknowledges that her obligations in this respect are matters of international concern over which the League of Nations has jurisdiction. She assures complete protection of life and liberty to all inhabitants of Austria, without distinction of birth, nationality, language, race or religion, together with the right to the free exercise of any creed. Similarly, all Austrian nationals are to be equal before the law. No restrictions are to be imposed on the free use of any language in public or private, and reasonable facilities are to be afforded to Austrian nationals of non-German speech for the use of their own

language before the courts. Like protection is thrown round minorities in the matter of schools, which are to give instruction in the children's own tongue and to share equitably in the public funds. Austria is not precluded, however, from making the teaching of German obligatory in all schools. These provisions are to be embodied in the fundamental law as a bill of rights under the protection of the League of Nations. To the same purpose, Czechoslovakia, the Serb-Croat-Slovene state and Rumania agree to embody in a treaty with the principal allied and associated powers such provisions as may be deemed necessary to protect all minorities and to insure freedom of transit and equitable treatment for the commerce of all nations.

To these provisions establishing racial, religious and linguistic liberty in all the countries affected by the treaty, the Rumanians entered an impassioned protest, seconded by the Yugoslavs and the Czechoslovaks, with mild support from Premier Venizelos for Greece. They charged these minority provisions were an infringement of their sovereignty, in that outside powers obtained a measure of control over the peoples of the Balkans; that the treaty further sought to establish an outside force to which discontented elements in the Balkan states could appeal over the heads of their own governments, making some nations superior and placing others—in this case, the Balkan nations—in an inferior position: not that they were unwilling to carry out the religious, racial and linguistic principles enunciated in the treaty, but that they preferred to carry them out themselves, without being under outside compulsion. In a response for the Allies, President Wilson upheld the provisions as essential to an absolutely just peace: the mistreatment of minorities had been a frequent cause of war, and it was desirable to eliminate that cause. As the great powers had made the greatest sacrifices in the world conflict, and had freed the smaller peoples, to whom they had ceded large territorial areas, the great powers felt that they had a right to lay down certain fundamental principles which they believed necessary for the peace which the powers had won and intended to maintain.

As in the case of the German clauses relating to the inhabitants of Alsace-Lorraine, constructive safeguards protect former Austro-Hungarian nationals acquiring nationality among the Allies. Their contracts are maintained subject to cancelation by their governments, and in undertakings constituted under Austro-Hungarian law in territories detached from the former empire, Austria must recognize new agreements by the Allies and transfer all necessary documents and

information. In the same territories, property of Austrian nationals is to be restored to its owners free from any measures of liquidation or bans imposed since the armistice, and contracts between Austrians and nationals of the new states are reaffirmed without option of cancellation. In return for reciprocal obligations to supply certain raw materials, supplies of coal are insured to Austria from Poland and Czechoslovakia, upon which she is dependent. Guaranties of freedom of transit, similar to the German provisions and including postal, telegraphic and telephonic services, grant Austria transit privileges through all former Austro-Hungarian territory in order to insure her access by land and water to the Adriatic.

The foregoing summary embraces a number of modifications introduced into the economic settlement in response to the observations of the Austrian delegation. The Allies further reminded the delegation that under the League of Nations, to which it hoped Austria could be admitted at an early date, further protection for all small communities, including the new Austria herself, was provided by the treaty of peace. No longer should powerful empires be permitted to threaten with impunity the political and economic life of lesser states. Strictly humanitarian ideals were to dominate the reparations commission; the vital interests of each community overshadowed every other consideration, and the commissioners were empowered to permit every reasonable mitigation required, for example, by the Austrian food situation.

In a set of miscellaneous measures of constructive intent, Austria agrees to all allied arrangements with Germany, Hungary, Bulgaria, and Turkey; renounces all pecuniary claims against any power signing the treaty; and accepts all decrees of allied prize courts, and conventions relating to traffic in arms. In return, the Allies undertake to continue the missionary work of any mission properly falling to them in the division of Austria's former foreign possessions.

The last main constructive measure, as in the German prototype, provides for the creation, maintenance, procedure and fundamental principles and ideals of an international labor organization. The treaty strikes at the root of the world problem in declaring that, as the League of Nations has as its object the establishment of universal peace, such a peace can be established only if it is based on social justice the world over. With that intent, the treaty recommends, in proposals made familiar in recent years by the American Federation of Labor, nine concrete objectives for industrial reform on an international

scale. Though not claiming completeness or finality for this program, the treaty expresses the conviction that even this beginning will confer lasting benefits on the wage-earners of the world.

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Recent Important Articles from Scientific Journals. *Criminal Responsibility of Individual Offenders Against the Law of Nations.* The chief weakness of international law is, as everyone knows, the lack of adequate sanctions. This weakness was abundantly demonstrated during the late war. In the effort to discover more effective means of enforcing observance of its commands and injunctions, many writers are now proposing the application of the criminal law to individual offenses against its rules. That is to say, it is proposed to try and punish specific offenses against the laws of war that are at the same time violations of the criminal law, whenever the offenders fall into the hands of the injured party. During the past two years a considerable amount of periodical literature has appeared in which the application of this remedy is advocated. Among the more important contributions of the kind may be mentioned an article by Professor Paul Pic of Lyons entitled *Violations des Lois de la Guerre, les Sanctions Nécessaires*, in 23 *Revue Générale de Droit International Public* (1916); an article by Professor Merignhac of Toulouse entitled *Sanctions des Infractions au Droit des Gens Commises au Cours de la Guerre Européenne*, (*ibid.*, 1917); an article by L. D. entitled *Des Sanctions à établir pour la Répression des Crimes Commis par les Allemands en Violation du Droit des Gens et des Traités Internationaux* (44 *Clunet*, 1917); an article by the late Professor Renault of Paris entitled *De l'Application du Droit Pénal aux Faits de Guerre*, in the *Rev. Gén. de Droit Int.* (Jan.-Aug., 1918), and an article by Professor Nast of Nancy entitled *Les Sanctions Pénales de l'Enlèvement par les Allemands du Matériel Industriel en Territoires Français et Belges Occupés par leurs Troupes* (*ibid.*, Jan.-Feb., 1919).

English and American writers also are not lacking who are advocating recourse to this expedient. See a paper by H. Bellot entitled "War Crimes, Their Prevention and Punishment," read before the Grotius Society of London and published in the second volume of its proceedings; an article by Professor T. S. Woolsey, entitled "Reconstruction and International Law," in the *American Journal of International Law* for April, 1919; and an article by C. H. Bartlett entitled "Liability for Official War Crimes," in 35 *Law Quarterly Review*.

These writers are all in agreement that it is within the legal right of a belligerent to try in his own courts individuals belonging to the armed forces of his adversary, as well as civil functionaries, for offenses committed against his nationals when the acts are at the same time crimes according to the criminal or military codes, such as pillage, incendiarism, rape, robbery, theft, violence and the like. The fact that such offenses are committed by soldiers during war make them none the less criminal acts. In fact, the military penal codes of most states provide for the punishment of such acts, and cases are not lacking in which particular German offenders who fell into the hands of the French authorities during the late war were tried and punished.

Many questions concerning the application of this principle, however, have been raised. For example, shall such offenses be tried by the regular criminal courts or by the military tribunals? If the offense is committed in a part of the national territory which is at the time under the military occupation of the enemy or if it is committed in foreign territory (for example against a prisoner), may the courts of the belligerent state of which the injured national is a citizen take jurisdiction? In countries holding to the territorial theory of jurisdiction the latter question raises serious difficulties. Another question is whether the offender may be tried in his absence in case he has not been apprehended. Most of the French jurists who have written on the subject answer the last question in the affirmative, but it is doubtful whether an English or American court would take jurisdiction in such a case. And in any case it is difficult to see what would be gained so long as the convicted offender remained outside the jurisdiction of the state in which he was tried.

A more perplexing question still is whether the plea of superior command should be admitted as a defense to the prosecution of a soldier charged with a crime committed by order of his commander. Some cases of this kind actually came before the military tribunals of France during the late war. To hold the individual soldier responsible would, it is argued by some, be destructive of military discipline; at the same time it would seem unjust to try and execute a young soldier who has been forced to commit a crime and for the refusal to do which he would be shot by his own commander. On the other hand, it is an axiom of English and American law that the plea of superior command is no defense for the commission of an illegal act. The French jurists generally hold that both the individual offender and the officer who gives the command should be held responsible, and in practice the

French military tribunals acted on this principle in the cases that came before them during the late war. The British manual of military law (arts. 336, 443), however, expressly declares that "members of the armed forces who commit violations of the recognized rules of warfare as are ordered by their commander cannot be punished by the enemy," although it adds that the officers or commanders responsible for such orders may, if they fall into the hands of the enemy, be punished. This rule is also found in the United States *Rules of Land Warfare* (art. 366). It is, however, hardly in accord with British authority¹ and it is strongly criticized by Bellot in his paper referred to above. It was also attacked by Sir Frederick Smith, then attorney-general and now Lord Chancellor of England. Oppenheim, however, approves the rule of the British and American manuals.²

The liability of the chief of state to trial and punishment for starting an unjust war and for the acts of his military and naval commanders in violation of the laws of war has been the subject of various articles.³ These authors all affirm the principle of the responsibility of the former Emperor and his liability to trial, although several of them accompany it with reservations.

Professor Nast in the article referred to above argues at length that the Germans who carried away the machinery and equipment of factories from the occupied regions of France and Belgium for use in their own industrial establishments may be tried by the Belgian and French courts for theft. When the allied forces occupied the Rhenish provinces after the signing of the armistice, they found a considerable amount of this machinery in the possession of certain German manufacturers to whom it had been sold, and some of them were arrested and detained by the French military authorities. The German government protested on the ground that the carrying away of the machinery was not in violation of the laws of war, but was within the

¹ See Hall, *International Law*, 6th ed., p. 410; Holland, *Law of War on Land*, secs. 117-118; Phillipson, *International Law and the Great War*, p. 260.

² *International Law*, II, sec. 253.

³ See among others Wright, "The Legal Liability of the Kaiser," this REVIEW, Feb., 1919, pp. 120ff; Erickson, *Law Notes*, Jan., 1919, 184ff; Clarke, "The Status of William Hohenzollern, Kaiser of Germany, Under International Law," 53 *American Law Review*, 401ff; Bartlett, "Liability for Official War Crimes," 35 *Law Quarterly Review*, 177ff; and the report of Professors Larnaude and de Lapradelle entitled *De la Responsabilité pénale de l'Empereur Guillaume II d'Allemagne*, distributed to the delegates of the Peace Conference and published in 46 *Clunet*, pp. 131ff, (1919).

legal right of a military occupant. Article 23g of the Hague Convention respecting the laws and customs of war on land allows an occupant to seize private property only when it is "imperatively demanded by the necessities of war." Article 46 forbids destruction or seizure of enemy private property, and article 47 forbids pillage. The German government maintained that in consequence of the Anglo-French blockade the vital interests of Germany, if not military necessity, required the seizure of the property in question and its use in the industries of the home country.

M. Nast points out, however, that according to the language and spirit of the Hague Convention, private property can be appropriated by the enemy only when its seizure is necessary to the conduct of his military operations or the enforcement of his measures of occupation, and does not justify the wholesale spoliation of factories in occupied territory, and the transportation of their machinery and equipment to his own country for use in private home industries for general purposes. Such an act was, he argues, sheer theft and not seizure based on imperative military necessity, such as is contemplated by the Convention. Consequently those responsible for it, as well as those who participated in the removal and transportation of the machinery to Germany were justiciable by the French or Belgium criminal courts, and the offenders might even be tried in their absence. Those who purchased the machinery in German territory from those by whom it was transported from France or Belgium, however, could not be tried by the Belgium or French courts for receiving stolen property because, according to the Belgian and French criminal codes, offenses committed by foreigners in foreign territory are not punishable in either Belgium or France unless the offense is one which is directed against the safety of the state.

Regarding the merits of the general principle that an officer or a soldier who commits an act in violation of the laws of war, when the act is at the same time an offense against the criminal law, should be held individually responsible and punished by the criminal or military courts of the injured belligerent whenever he falls into the hands of the authorities, we can only express approval; and the Peace Conference in requiring Germany to deliver up for trial and punishment designated offenders set a new standard which it is to be hoped will be followed in future wars. Unfortunately, however, this expedient cannot be enforced against offenders belonging to the armed forces of the victorious belligerent, and in the case of those surrendered by the defeated

belligerent there is the danger that justice may not always be meted out under such circumstances. It has been proposed therefore by some authorities that such offenders should be tried by international tribunals or by courts composed of judges representing neutral countries. But whatever the form or the procedure the desirability of bringing such offenders to the bar and of punishing the guilty is incontestable. If it were always practicable and were followed more generally, there would be fewer atrocities and violations of the law in the wars of the future.

Reconstruction of International Law. It was to be expected also that the termination of the war would be followed by much discussion of the problem of the reconstruction of international law and the reorganization of international relations. Dr. J. de Louter, professor of international law in the University of Utrecht, in an article entitled *La Crise du Droit International*, published in the *Revue Générale de Droit International Public* for January-February, 1919, points out that the existing body of international law, although by no means destroyed as some have contended, and the old organization of international relations, have been shown to be adequate neither to prevent war nor to curb its violence when it has once been unchained. International law, he says, is now passing through a period of evolution analogous to a pathological crisis, and its foundations and content must be reformed. The view must be adopted that war is not a product of law, but an attack upon law; and while the right of war as such cannot be abolished, the procedure of conducting it may be more effectively regulated; and he raises the question whether the benefit of the rules should not be limited to powers which are defenders of the law and refused to those who are aggressors, on the theory that the latter are violators of the law and should not be permitted to invoke its provisions. In this connection, he suggests that the customary division of international law into the law of peace and the law of war is superannuated and ill-founded. Peace and not war is now the normal condition of society, and a division of the law of nations analogous to the divisions of municipal law should take the place of the old division.

The conceptions of law and war are mutually exclusive; a law of war is an artificial and contradictory conception and the international law of the future should be based on the idea of the evolution and perfection of the law of peace rather than of war. The new international law must, he thinks, continue to recognize the sovereignty of states. The view advocated by some authorities that the existing sovereignty

of states must be replaced by an authority above them; that legislative, executive and judicial organs together with an international police force should be set over states, Dr. de Louter emphatically rejects. National sovereignty, he argues, is not an obstacle but an indispensable instrument in the progress of international law. The establishment of a super-state and the absorption by it of the existing states would mean the destruction of international law. The difficulty, he thinks, is not in the sovereignty of states, but rather in the false conception of what constitutes sovereignty and in the abuse of it. Sovereignty is the supreme power of the state over all persons and things within its jurisdiction; it is not the power of a state to determine its own standards of international conduct and to pursue policies that are subversive of its rights and interests of other states. It is therefore no surrender of sovereignty for a state to agree to arbitrate its controversies with other states, or submit them to a board of conciliation or to an international court.

Regarding the content and scope of the new international law Dr. de Louter very properly remarks that it must not be limited to general rules of conduct, but must embrace the larger domain of international commerce, communication, finance, instruments of exchange, public health and the like. This will involve no innovation in principle since, as an examination of recent treaties will show, these matters are already dealt with to a large extent in individual conventions.

Among the bases on which the international law of the future should be founded are justice, that is to say, the maintenance of a juridical order among independent states; respect for the principle of nationality; nonrecognition of the right of conquest or cession without the express consent of the inhabitants of the territory affected; liberty of commerce (trade must be internationalized and protective tariffs and other trade restrictions ought to be abolished); freedom of the seas (which was destroyed during the late war by unlawful blockades, institution of war zones, the extension of the doctrine of contraband and the like); and the abolition of secret treaties.

Finally, some form of sanction for international law must be found and guaranties more solid and effective must be provided; though he does not tell us what they shall be or how they may be enforced.

The necessity of a new and reformed body of international law is dwelt upon by Professor T. S. Woolsey in an article entitled "Reconstruction and International Law" in the *American Journal of International Law* for April, 1919. This need, he points out, will be impera-

tive in case an international court should be created as a part of the general scheme of international reorganization. The new law should, so far as possible, be embodied in a code which may be expected to grow and develop through application and interpretation by the international tribunal.

J. W. GARNER.

University of Illinois.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

University of Wisconsin

Jesse Macy, for many years professor of political science at Grinnell College, Iowa, and president of the American Political Science Association in 1916, died early in November, 1919. A pioneer in the United States in the systematic study and teaching of politics in a small institution in a new agricultural community, he gained a national and international reputation in his field.

Born in 1842, in Henry County, Indiana, of a Quaker, abolitionist family, he took an active part in the hospital service of the Union army during the Civil War, and in 1870 was graduated from Iowa (now Grinnell) College. A year later he was appointed principal of the academy at this institution; in 1883 he became acting professor of history and political science in the college; and two years later he was appointed professor of political science (probably the first in this subject), a position which he held until retired as professor *emeritus* in 1912.

Aside from several small books, dealing mainly with local institutions in Iowa, his works are: *The English Constitution* (1897), *Political Parties in the United States, 1841-61* (1900), *Party Organization and Machinery* (1904), and (with J. W. Gannaway) *Comparative Free Government* (1915). Among his shorter articles may be noted his presidential address before the American Political Science Association, on "The Scientific Spirit in Politics," published in this REVIEW for February, 1917.

He made frequent visits to England and the continent of Europe, where he formed personal relations with leading students and men in public life. In 1913, he lectured at a number of French provincial universities on the Harvard Foundation.

Dr. David P. Barrows, professor of political science at the University of California, was on December 2 elected to the presidency of that institution and took office immediately. President Barrows studied at the universities of California, Columbia, and Chicago, receiving his doctor's degree in anthropology at the last-named institution. He went to the Philippines with the Taft Commission, and was successively director of city schools in Manila, chief of the bureau of non-Christian tribes, and director of the bureau of education of the islands. He returned to the University of California in 1910, and has since been professor of education, professor of political science, and dean of the faculties. During the war he served as major and lieutenant colonel with the expeditionary forces in Siberia.

Dr. L. S. Rowe, of the University of Pennsylvania, who has been for the past two years assistant secretary of the treasury, has been appointed chief of the division of Latin-American affairs in the department of state and has been granted leave of absence for an additional year.

Dr. Cyrus F. Wicker has been appointed assistant professor of political science at Pennsylvania and is giving Dr. Rowe's courses during the current year. Dr. Wicker was graduated at Yale and received the degree of D.C.L. at Oxford, where he studied as a Rhodes scholar. In recent years he has been engaged in diplomatic service in Central and South America.

Professor Edgar Dawson, of Hunter College, New York City, has been given leave of absence for the year 1920 to study the teaching of government in secondary schools. He will welcome correspondence with those who are interested in the subject, suggestions as to points which should be covered, or information as to successful experiments now being made in the field. He hopes to publish the results of the year's work in the spring of 1921.

Mr. Herbert Adams Gibbons, whose *New Map of Asia* was published recently by the Century Company, has been chosen by Princeton University to resume the Spencer Trask lectures which were interrupted by the war. He began his work there on November 12, speaking on "What Confronts France."

Dr. Earl W. Crecraft, formerly lecturer in government at New York University and secretary of the Citizens' Federation of Hudson County, N. J., has been appointed professor of political science at the Municipal University of Akron, Ohio.

Professor R. G. Campbell, of Washington and Lee University, has returned to his academic work after spending several months in France with the army educational corps and a few months in London as agent of the United States shipping board.

Thomas H. Reed, professor of municipal government, succeeds President Barrows as chairman of the department of political science at the University of California. The department will be increased by the temporary addition of Professor Edgar Dawson, of Hunter College, New York. Professor Dawson will devote himself to instruction in the teaching of civics and government. Other additions are contemplated.

Two bureaus for research in foreign relations and administration have been organized in the political science department of the University of California. Dr. J. R. Douglas, instructor in political science, is secretary of the bureau of public administration, and Dr. C. E. Martin, lecturer in international law and political science, is secretary of the bureau of international relations.

A series of public lectures was given by members of the department of political science of the University of California during the past semester. The titles and speakers were as follows: "Soviet Government in Eastern Europe," Professor D. P. Barrows; "The League of Nations and the Peace of the World," Professor T. H. Reed; "The Peace Conference and Its Problems," Dr. L. Ehrlich; "Theodore Roosevelt and American Foreign Policy," Dr. C. E. Martin; "The Government and the Railroad Problem," Dr. J. R. Douglas; "The Politics of the Industrial Crisis," Professor T. H. Reed.

Professor H. G. James, of the University of Texas, has been promoted to a full professorship in the department of political science.

Professor Raymond G. Gettell, of Amherst College, will give courses in political science at Cornell University next summer.

A memorial fellowship fund has been provided at Amherst College, for the study of social, economic, and political institutions. Appointments will be open to graduates of any college or university, and will be based on evidence of marked mental ability, promise of original work, qualities of leadership, and a spirit of service. A fellow will be appointed every second year for a period of not more than four years. It is desired that at least half of the period shall be spent in study in Europe, and the last year at Amherst College, where a course of lectures may be given. The fund will provide \$2000 a year for each fellow. The committee in charge will include three from Amherst College, one associated with some other college or university, and one business or professional man.

A notable change in college organization has resulted from action taken last June by the trustees of the College of the City of New York. As now organized, it consists of three distinct but closely articulated schools: the college of arts and science, the school of technology, and the school of business and civic administration. The change was largely an outgrowth of the expansion of the college along lines of business and civic instruction under the direction of Professor Frederick B. Robinson. The former department of political science has been divided. The courses in economics and business have been made the basis of the school of business and civic administration, of which Professor Robinson is dean. Another portion of the old department is reconstituted as the department of government and sociology under the direction of Professor W. B. Guthrie.

Dr. George H. Derry, assistant professor of political science at the University of Kansas during the year 1918-19, is lecturing in the department of economics and politics at Bryn Mawr College, during the absence of Professor Marion P. Smith, who is spending her sabbatical year in the Far East.

Mr. John Barrett has announced his intention to retire from the office of director-general of the Pan American Union at the close of the present fiscal year. It is stated that he will, after a time, become president of a new unofficial Pan American organization which is planned to be "the most practical and comprehensive combination for the development of international commerce and goodwill that has ever been formed."

The New York State Reconstruction Commission has published a comprehensive report on *Retrenchment and Reorganization in the State Government* which advocates extensive changes in the state governmental machinery, including, among other things, the consolidation of numerous departments, centralization of executive responsibility, extension of the governor's term to four years, and a consolidated budget system with accounting control over spending officers.

The members of the Pennsylvania commission on constitutional amendment and revision were announced by Governor Sproul in November. The commission consists of twenty-five members appointed by the governor, under the chairmanship of the attorney-general of the state, William I. Shaefter. The selections show a desire to make the body representative of widely varying tendencies of thought and interest. The commission includes U. S. Attorney-General Palmer; Hampton L. Carson; U. S. Secretary of Labor Wilson; ex-President Sharpless of Haverford College; T. DeWitt Cuyler, railway attorney; former judges Sulzberger and Gordon; Gifford Pinchot; Provost Smith, of the University of Pennsylvania; and F. N. Thorpe, professor of political science and constitutional law at the University of Pittsburgh. There are two women members. The commission was created to prepare a draft of a revised constitution for submission to a convention which is to be provided for at the session of the legislature in 1921.

The thirty-ninth annual meeting of the Academy of Political Science in the City of New York was held at the Hotel Astor November 21-22. The general subject under consideration was railroad legislation, and sessions were devoted to each of the following topics: the railroads and the shipper; the railroads and the investor, the railroads and labor, and the railroads and the public. Among persons who read papers or otherwise participated in the program were B. H. Meyer, interstate commerce commissioner; John E. Oldham, banker of Boston; Thomas W. Hulme, chairman of the President's committee on federal valuation; Frederick C. Howe, former commissioner of immigration at the port of New York; Daniel Willard, president of the Baltimore and Ohio Railroad; Emory R. Johnson, of the Wharton School of Finance and Commerce, University of Pennsylvania; and Albert M. Todd, president of the Public Ownership League of America. The speakers at the annual dinner were Hon. Schuyler Merritt, member of the house committee on interstate and foreign commerce; Howard Elliott,

president of the Northern Pacific Railroad; Alfred P. Thom, general counsel of the Association of Railway Executives; and Timothy Shea, acting president of the Brotherhood of Railway Firemen and Engineers. The complete proceedings have been published by the Academy.

By the addition of two members to the teaching staff of the school of government, instruction in political science at the University of Texas has been amplified along two lines. One of these is Latin-American government and diplomacy, in which courses are offered by Professor C. H. Cunningham, who has specialized in the field of Latin-American affairs, has traveled extensively in South and Central American countries, and was last year in Mexico as vice-consul. The other subject is American diplomacy and world politics, in charge of Mr. C. P. Patterson, who is giving special attention to the relations of the United States to Europe, to the problems growing out of the League of Nations, to the political aspects of reconstruction, and to the relations of the United States to China, Japan, and other Far Eastern states.

To improve instruction in the school of government, and to develop facilities for advanced instruction in research, a bureau of government research has been established, to continue the work begun by the bureau of municipal research and reference, and in addition, to undertake research work along other lines. Digests and bulletins are in preparation on important subjects in state, county, and municipal government. The primary purpose of the bureau will be to serve as a laboratory and reference bureau for the students in the school; but its facilities will also be available, so far as possible, to public officials, to interested citizens, and to anyone who may call upon the university for governmental information. Mr. Frank M. Stewart is in charge of the bureau staff, and is the secretary-treasurer of the League of Texas Municipalities. The library and seminar room conducted in connection with the bureau is in charge of Mrs. Sarah S. Edwards, who has had experience in reference library work in the Brooklyn public library and the Indiana legislative reference library.

The International Labor Conference held in November in the Hall of the Americas of the Pan American Building, Washington, was the first important assembly of its kind brought together under the terms of the Peace Treaty. Its significance, however, was not generally appreciated in Washington or throughout the United States. On account of unfortunate newspaper notices and certain speeches made

in Congress, the idea went abroad that this conference was composed of radical labor leaders who desired to upset present conditions and bring about industrial revolution. The contrary was the truth. Attending the conference were almost 300 delegates and advisers, from 30 different countries. One-third of these were delegates of the governments, and were almost exclusively leading statesmen or men prominent in public affairs. Another third consisted of employers of labor and representatives of capital, including many of the greatest employers of Europe and Japan. The remaining third was made up of representatives of labor organizations in the participating countries, and with hardly an exception these were men of ability and sincerity who wished to do their part in bringing labor and capital closer together. Although the United States, not having ratified the Peace Treaty, was unable to participate officially, the conference elected Secretary of Labor W. B. Wilson as its chairman. All discussions and resolutions were interpreted from English into French or from French into English, as was required; and the proceedings were reported not only in English and in French, but in Spanish, for the benefit of the large number of delegates from Spanish-speaking countries. The conference made specific recommendations on many points affecting labor, and appointed a governing board to carry on its work until the next meeting should be held, in 1920.

The Civil Service Reform League has issued an important preliminary report, prepared by a committee of which Dr. Ellery C. Stowell was chairman, on the subject of needed reforms in the American diplomatic and consular service. The principal recommendations are: (1) placing the services strictly on a merit basis; (2) purchase of embassies, legations, and consulates; (3) an increase of the salary scale in all branches; (4) abolition of the rule, known as the state quota, according to which appointments in the foreign service are distributed among the states in proportion to the number of inhabitants; (5) more general selection, by the President and other appointing officers, of the representatives at international conferences from the foreign service and from the experts in the employ of the government; and (6) completion of the Americanization of the consular service by the appointment of salaried vice-consuls, after examination, to act in the place of foreigners now serving.

Specific recommendations with a view to guaranteeing the merit basis are: (a) that the age limit for entering the service be reduced so

as not to exceed 30 years; (b) that the examinations be held at a fixed date (preferably at the end of the academic year), with such supplementary examinations as may be necessary; (c) that examinations for both branches of the service be open to any citizen of the United States without designation by the President or recommendation by senators or representatives; (d) that the written examinations be held by the civil service commission in the principal cities where civil service examinations are held; (e) that the written examination set each year be published with the ratings of the successful candidates; (f) that candidates who pass the written examination with a certain approved rating be certified by a local examiner to receive transportation to Washington for the purpose of taking the oral examination; (g) that candidates who pass the oral examination be given a period of trial and instruction at the department of state before nomination for appointment.

To eliminate political considerations it is advocated in particular: (a) that the President be urged to fill the post of minister by the promotion of capable officers in the foreign service, and that when a vacancy occurs the secretary of state be required to submit to the President for his consideration the names of secretaries and consuls who merit promotion; (b) that ministers be appointed to a grade and not to a specific post; (c) that the President be urged, in as far as practicable, to promote ministers to embassies when vacant; (d) that examinations be held every year for those who wish to be transferred from the consular to the diplomatic service, or vice versa, and that from the candidates successful in passing the tests a certain number be transferred; (e) that the promotion of consuls be from grade to grade, with a reasonable period (at least one year) of service in each grade; (f) that the existing rule permitting the appointment to the foreign service without examination of certain employees of the department of state be restricted to employees who have entered the department after examination or have served therein not less than five years.

Annual Meeting. The fifteenth annual meeting of the American Political Science Association was held at Cleveland, December 29-31, 1919. Over a hundred members registered, and the number of persons in attendance was probably about one hundred and forty. Several other organizations were in session at Cleveland at the same time, including the American Historical Association, the National Municipal League, and the American Association of University Professors. Joint sessions were held with the first two of these associations.

The opening session of the Political Science Association was devoted to the general subject of state constitutions. Professor John A. Fairlie, of the University of Illinois, presided, and papers or talks of a practical character, dealing with conventions in certain states, were given by Dean George W. Knight of Ohio State University, Dr. Charles A. Beard, director of the New York Bureau of Municipal Research, Professor Albert Bushnell Hart of Harvard University, and A. E. Sheldon of the Nebraska Legislative Reference Bureau. In the absence of Dr. W. F. Dodd, of the Illinois Legislative Reference Bureau, Professor Fairlie discussed the Illinois constitutional convention, which has since come into session.

At a joint meeting with the American Historical Association presidential addresses were delivered by Mr. William R. Thayer on "Recent Fallacies in History" and Professor Henry Jones Ford on "Present Tendencies in American Politics."

At a second joint session with the Historical Association, December 30, the general subject was political conditions in Russia and the Far East. Jerome Landfield, of the Russian Economic League, vividly described the November revolution, and Baron S. A. Korff discussed the future Russian constitution as viewed by Russian liberals. Professor W. W. Willoughby of Johns Hopkins University, gave a clear analysis of the political situation in the Orient.

The afternoon session of December 30 was held jointly with the National Municipal League and was devoted to the subject of budgetary reform. James W. Good, chairman of the committee on appropriations of the national house of representatives, who was to have delivered the principal address, was detained in Washington by committee hearings. His place on the program was taken by Dr. W. F. Willoughby, director of the Institute for Government Research at Washington. Dr. Willoughby, in addition to being an authority on budgetary matters, was in a position to speak expressly for Mr. Good and the appropriation committee.

On the evening of the 30th Frederick P. Keppel, ex-assistant secretary of war, spoke on "The General Staff of the War Department." The following forenoon a session was held on the general subject of foreign political conditions. A paper on "The New German Constitution" was read by Professor W. J. Shepard of the University of Missouri. Another, entitled "The New Balkans of Central Europe, with Special Reference to Hungary," by Professor Philip M. Brown of Princeton University, was read by Dr. S. K. Hornbeck. And Professor Ludwik Ehrlich of the University of California spoke on "Old and New Poland."

The closing session was devoted to the subject of national administration and papers were read as follows: "Democracy and Efficient Government," by Professor C. G. Fenwick of Bryn Mawr College, and "The Problem of Administrative Legislation," by Professor John A. Fairlie of the University of Illinois.

At the business session of the association, held on the evening of the 30th, the acting secretary-treasurer submitted a report on the membership and finances of the association showing the following facts:

Present membership, 1321; applications for membership on hand, 3; life memberships fully paid, 53; members owing dues for 1919, 88; members owing for 1918 and 1919, 43; members owing for 1917, 1918 and 1919, 17; balance in general account December 15, 1918, \$512.98; trust fund, December 15, 1918, \$559.37; receipts from December 15, 1918, to December 15, 1919, \$5467.08; disbursements between same dates, \$4756.37; trust fund, December 15, 1919, \$724.98; special account (to be added to trust fund in 1920), December 15, 1919, \$170; balance in general account December 15, 1919, \$1054.59.

On behalf of the executive council, announcement was made (1) that the committee on the preparation of a critical bibliography of political science has been discharged, at its own request; (2) that Professor Edgar Dawson, of Hunter College, has been designated to represent the association on the national committee on the teaching of citizenship; (3) that the committee on instruction in political science, authorized three years ago but not appointed on account of war time conditions, will be appointed by the incoming president; and (4) that a committee on membership has been created, consisting of Professors H. M. Bowman of Boston University, H. G. James of the University of Texas, J. D. Barnett of the University of Oregon, B. F. Shambaugh of the University of Iowa, R. S. Saby of Cornell University, Lindsay Rogers of the University of Virginia, O. D. Skelton of Queens University, Kingston, Canada, and C. A. Dykstra of Cleveland, with the secretary-treasurer of the association as *ex officio* chairman.

A proposal that the association ratify the constitution of an American Council of Learned Societies devoted to Humanistic Studies, an organization in process of formation during the past six months, was referred to the executive council for action after more information on the subject should have become available.

The place of meeting in 1920 was left to the decision of the executive council.

The managing editor of the REVIEW announced that no changes would be made in the board of editors for 1920.

Officers of the association for 1920 were elected as follows: President, Paul S. Reinsch, Washington, D. C.; first vice-president, David P. Barrows, University of California; second vice-president, Edward S. Corwin, Princeton University; third vice-president, R. S. Childs, New York City; secretary-treasurer, Frederic A. Ogg, University of Wisconsin. The omission of the meeting of the association in 1918 interfered with the scheme of rotation in the executive council; hence five councillors were elected for the term ending in December, 1921, and five others for the term ending in December, 1922. The first group consists of J. P. Chamberlain of Columbia University, E. A. Cottrell of Leland Stanford University, R. E. Cushman of the University of Minnesota, S. K. Hornbeck of Washington, D. C., and F. B. Sayre of Harvard University. The second group consists of Edwin Borchard of Yale University, R. T. Crane of the University of Michigan, H. W. Dodds of Western Reserve University, C. E. Merriam of the University of Chicago, and S. P. Orth of Cornell University.

The undersigned auditing committee has examined the accounts of the secretary-treasurer of the American Political Science Association and has found them correct, as reported by him at the Cleveland meeting.

December 31, 1919.

EDGAR DAWSON,
CARL F. GEISER.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES¹

AMERICAN GOVERNMENT AND PUBLIC LAW

- Austin, Gertrude B.*, Leadership in the Woman Suffrage Movement in New York City. Columbia University.
- Berdahl, Clarence A.*, The War Powers of the Executive. University of Illinois.
- Beyle, Herman C.*, History of Labor Legislation in Ohio. University of Chicago.
- Branham, Lucy Gwynne*, The History of Labor and Politics in New York. Columbia University.
- Carroll, Thomas F.*, The Espionage Act and Freedom of Speech and Press in War Time. Princeton University.
- Cottrell, E. A.*, Municipal Budget Systems. Harvard University.
- Diamonon, Victoriano*, The Government of the Philippines, 1898-1919. University of Iowa.
- Dunbar, Louise B.*, A Study of "Monarchical" Tendencies in the United States, 1776-1801. University of Illinois.
- Frye, L. A.*, History of State Control of Public Service Corporations in New York. Columbia University.
- Gulich, Luther H.*, The Evolution of the Budget in Massachusetts. Columbia University.
- Hanford, A. C.*, The Reconstruction of State and Municipal Government by Constitutional Amendment. Harvard University.
- Hart, S. J.*, The Ordinance-making Powers of the President of the United States. Johns Hopkins University.
- Holmes, Lucia M.*, Development of Municipal Government in the United States before the Civil War. Northwestern University.
- Hormell, O. C.*, Municipal Finances as a Function of Government. Harvard University.
- Jensen, Christen*, The Pardoning Power in the American States. University of Chicago.
- Jones, O. G.*, Making a Filipino State. University of California.
- Lambie, Morris B.*, The Standardization of Governmental Salaries. [Harvard University.
- Leigh, Robert D.*, Federal Public Health Administration. Columbia University.
- Loomis, Milton E.*, Legal Status of the University and its Relation to the State. University of Chicago.
- McCaffery, G. H.*, Municipal Policies. Harvard University.

¹ For previous lists, see *American Political Science Review*, IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914).

- Martz, C. E.*, The Growth of the Power of the Senate. Yale University.
- May, Samuel C.*, The Consolidation of City and County Governments. Columbia University.
- Morgan, C. S.*, A Statistical Analysis of the Increase in American Public Expenditures. Yale University.
- Norton, A. C.*, A Historical Study of the Separation of Powers in the United States. Harvard University.
- Patten, Stephen J.*, Non-partisan Municipal Elections. Columbia University.
- Rankin, R. C.*, Pennsylvania Politics, 1790-1838. Harvard University.
- Richards, O. R.*, The Movement for the Constitution of the United States. Columbia University.
- Ryden, G. H.*, River and Harbor Legislation in the United States. Yale University.
- Sargent, Noel*, The Delegation of Legislative Power. University of Minnesota.
- Senning, J. P.*, Legislation and Legislative Methods in Connecticut since 1818. Yale University.
- Stewart, Frank M.*, Reorganization of the State Government of Texas. University of Texas.
- Wanlass W. L.*, The United States Department of Agriculture: a Study in Administration. Johns Hopkins University.
- West, Victor J.*, Corrupt Practices Legislation. University of Chicago.
- White, Leonard D.*, The Development of Public Regulation in Massachusetts. University of Chicago.

FOREIGN AND COMPARATIVE GOVERNMENT

- Balcom, A. B.*, The Development of English Poor Law Policy. Harvard University.
- Bruce, Harold R.*, The Political Activities of Organized Labor in England and the United States; a Comparison. University of Wisconsin.
- Brush, Elizabeth P.*, Guizot in the Reign of Louis Philippe. University of Illinois.
- Clark, D. O.*, Cabinet Government in France. University of Illinois.
- Cochran, M. H.*, The Frankfort Parliament of 1848. Harvard University.
- Collins, Ross W.*, Church and State in France under the Third Republic. Columbia University.
- Flournoy, F. R.*, The Extent of Parliamentary Control of Foreign Policy in Great Britain. Columbia University.
- Howe, H. E.*, Historical Antecedents of the Unicameral System in New Brunswick. Yale University.
- Hyde, D. C.*, Canadian War Finance. Harvard University.
- Moon, P. T.*, Development of the Political and Social Program of the Action Libérale in Modern France. Columbia University.
- Ram, V. S.*, The Government of Dependencies. Harvard University.
- Swanson, F. C.*, Education and the Democratic Movement in England. Yale University.
- Taft, Helen H.*, The Colonization and Early History of Australia. Yale University.

- Trotter, R. G.*, The Establishment of Federal Government in Canada. Harvard University.
- Wilson, G. E.*, The Life of Robert Baldwin: a Study in Canadian Politics. Harvard University.
- Wittke, Carl*, History of Parliamentary Privilege in England. Harvard University.
- Yokoyama, T.*, Historical Development of the Japanese Judiciary, 660 B.C. to 1867 A.D. Johns Hopkins University.

INTERNATIONAL AFFAIRS

- Arragon, R. F.*, The Panama Congress. Harvard University.
- Bancroft, E. C.*, Trade Relations of Canada with the United States. Yale University.
- Billing, T. C.*, Negotiations of the United States for the Purchase of the Danish West Indies. University of Pennsylvania.
- Carpenter, Park*, The Question of Administration of Santo Domingo by the United States, 1848-1871. Harvard University.
- Downing, Thomas G.*, Commercial Relations of the United States with China. University of Pennsylvania.
- Flack, Joseph*, Recent Commercial Relations between the United States and Great Britain. University of Pennsylvania.
- Fuller, J. V.*, The Foreign Policy of Bismarck's Later Years. Harvard University.
- Hurwitz, Henry*, Change of Sovereignty in International Law. Harvard University.
- Jaffe, William*, The Question of Armaments. Columbia University.
- Lockey, J. B.*, Latin America and the Monroe Doctrine. Columbia University.
- Martin, C. E.*, Policy of the United States Regarding Intervention. Columbia University.
- Mori, Kenichi*, Japanese Diplomacy in Three Wars. Columbia University.
- Noble, George B.*, The Egyptian Question. Columbia University.
- Odatey, George*, Methods of Improving Banking and Financial Relations between the United States and Japan. Columbia University.
- Reed, E. L.*, Relations between the United States and Portugal. University of Pennsylvania.
- Steeffel, L. D.*, The Schleswig-Holstein Question, 1863-64. Harvard University.
- Stuart, Graham H.*, French Foreign Policy, 1898-1914. University of Wisconsin.
- Townsend, Mary E.*, The Origins of Modern German Colonialism. Columbia University.
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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

The Rise of Nationality in the Balkans. By R. W. SETON-WATSON. (New York: E. P. Dutton and Company. 1918.)

Our Allies and Enemies in the Near East. By JEAN VICTOR BATES. With an introduction by the Rt. Hon. Edward Carson, K. C. M. P. (New York: E. P. Dutton and Company. 1918.)

The first volume deserves serious consideration as would, of course, any book of Dr. Seton-Watson on the Balkan peoples. At once its table of contents gives us confidence to expect systematic treatment of the subject, and this is true, although there are some imperfections in that treatment.

Part I is distinctly historical, although some chapters, notably those upon Byzantium, upon Stamboul and upon the Balkan questions are somewhat sketchy. In about one hundred and forty pages the author introduces us to his subject and brings us to the beginning of the Balkan League, with which Part II commences. This part is in fact a study of the causes and events of the two Balkan wars of 1912-13. The book closes with the signing of the armistice at the end of the Balkan wars, without making the connection that would be so valuable between them and the world war, an omission due to the author's departure for military service.

Though, too, the book bears the date of 1918, the notes as well as the text reveal that it was written in 1914 with a few later embellishments. It therefore borders dangerously upon the line of the obsolete, reflecting past conditions as it does—a past chronologically but little removed from us but in point of atmosphere so radically different. The text is clear and readable but not without apparent contradictions. At one place (p. 199) it is stated that the Balkan allies "embarked upon war without any agreement with regard to

sharing the spoils," but later (p. 231) the author refers to "the division of spoils in accordance with a clearly defined plan" which is apparently "based upon a definite treaty of partition." Such ambiguities are, however, not numerous. A bibliography that appears distinctly helpful and an index of the conventional type serve as accessories. Of the maps, the one dealing with the races of the Balkan peninsula is likely to be the most helpful and the most open to controversy. Others are: *The Balkans by Treaty, 1800-1878*; *The Balkans by Treaty, 1878-1913*; *The Balkan Campaigns, 1912-1913*. They are not mentioned in the table of contents; but are all clear, usable and accurate, apparently, so far as such maps can be at present.

We should hardly place the book in the five dollar class especially in its American, "inexpensive" appearing edition. Many may pass it by on account of the main criticism offered in this review, its "out-of-dateness," even at the time of its publication. But there may be compensation for this weakness in the insight given the reader as to the opinions and conclusions of the author in a field where controversy rages and where calm judgment such as his is none too common.

The title of the second book is misleading. There is nothing about Serbs, Montenegrins or Greeks, Turks or Albanians. Over a third of the volume is devoted to the Rumanian lands; but nearly a half to Bulgaria. The remaining pages tell us of the Jews of Croatia. In fact very much of the book is about Jews and Gypsies, and also about the Saxons. Rose fields, the night side of Sofia and military life in the capital, also minute descriptions of dress are interspersed with bits of gossip and scandal. The Bulgars are characterized as "a cruel and brutal nation" (p. 137), as "the murderers of the Balkans" (pp. 112, 122), statements which rouse (like the procession of epithets, even abuse, against Ferdinand) challenging comparisons with other peoples and rulers. "But for some reason," says the author (p. 110), "nothing is really pleasing" in Bulgaria; an attitude of mind even worse than that of Kipling in his *American Notes*. Throughout the book the flood of adjectives is excessive, and while on the whole friendly to the Jews and Rumans, the author's gift in vividly picturing the disagreeable cannot be gainsaid. Yet the writer of the introduction could scarcely have been well acquainted with the contents of the volume, since he refers to it as "informing" and suggests that it will give "a better understanding of the Near East and its peoples." The picture the author presents to us is drawn with entirely too dark shading in most cases: the unusual and the abnormal are developed rather than the usual and the normal.

The faults in the make-up of the book are conspicuous. The type is poor, the index quite inadequate, maps are missing, the chapter titles misleading, and the illustrations one might expect in a work of this kind, designed as it should be for the popular taste rather than the scientific, entirely lacking.

ARTHUR IRVING ANDREWS.

Tufts College.

German Social Democracy during the War. By EDWYN BEVAN.
(New York: E. P. Dutton and Company. 1919. Pp. x, 280.)

Notwithstanding the apparent unanimity with which the Social Democrats in the Reichstag voted war credits and in other ways supported the imperial government in the early days of August, 1914, a rift within their ranks—which indeed existed from the first—gradually became a chasm, and in January, 1917, the party fell definitely into two entirely separate and sharply antagonistic bodies. The “Majority” members continued to support the government, some on the ground that the time had come for the party to change its principles and accept responsibilities in the state, others on the ground that the party’s principles were right but did not preclude participation in measures for the defense of the country in a nonaggressive war. The Independents, on the other hand, went into open opposition, some denying that the war was, on the German side, one of self-defense, others maintaining that no socialist could consistently have any share in furthering the war policy of a capitalistic state, even if the war be a defensive one.

Mr. Bevan, writing early in 1918, undertakes to trace the history of Social Democratic participation in and protest against the war, from the beginning to the accession of Count Hertling to the chancellorship in the autumn of 1917. He fully recognizes the limitations under which he, as a foreigner writing in a hostile country, works; he says that the finally satisfactory account will have to be written by some one who was “inside the movement.” Diligent and discriminating use of German books, pamphlets, and newspapers, has, however, made visible at least the broad outlines of Social Democratic history in the war period; and Mr. Bevan has put together the results of his researches in a book which is not only interesting but, for the time being at all events, decidedly useful.

The theme of the volume is the continuous growth of the anti-war minority in numbers and influence, and the treatment is mainly chronological. The various defenses offered by the majority elements for their course are clearly analyzed; the arguments and motives of the Independents are judiciously appraised; and two principal conclusions are arrived at: (1) that the differences of view were fundamental and that the reproaches which the majority direct against the Independents for disrupting the party, and the reproaches which the Independents direct against the authorities of the old party for insisting upon conformity of action within the party, are equally unreasonable; and (2) that the minority grew, "not because the German masses cared for 'self-determination of nationalities' or 'no annexations,' or any other ideal principle, but because the bereavements and material discomforts of the war made them want peace above everything else, and the policy of the minority leaders seemed to promise them peace most speedily."

FREDERIC A. OGG.

University of Wisconsin.

Alsace-Lorraine since 1870. By BARRY CERF, University of Wisconsin. (New York: The Macmillan Company. 1919. Pp. 180.)

Not the least among the triumphs of the righteous cause which carried the Allies to victory was the restoration of Alsace-Lorraine to France. The captivity of this land which lies between the Rhine and the Moselle lasted almost fifty years. That the question of Alsace-Lorraine was one of the causes of the world war, or, as Mr. Barry Cerf states in the preface to his excellent volume, one of the most important obstacles to peace between France and Germany, every student of history will agree. The loss of the Reichsland, the Land of the Empire, is perhaps the severest blow Germany has received.

The incorporation of Alsace-Lorraine into France dates from 1552. At that time it was a "mosaic of principalities, bishoprics, free cities, republics, seignories, etc., which comprised the imperial possessions on the left bank of the Rhine." About that same date it was organized by French administration into two provinces. These had been for centuries the prey of every invader; they had been the battle ground of Europe. France promised protection, prosperity and happiness; and France kept her word until the deplorable tragedy of 1871. Alsace-

Lorraine was then wrested from the motherland by unjustifiable claims which were pressed with irresistible force; but her national heart and life were kept inviolate from the conquering invader. German law and enforced German speech could not effectually Teutonize the brave little country whose national emblem was the forget-me-not. Never did the provinces lose their essential unity with France or their passionate loyalty to her—a fact amply proved by Mr. Cerf from the enemy's own mouth. "We have to take the same precautions in Alsace as on the soil of the enemy," said a German officer in 1916. This, after nearly half a century of occupation! That Germany realized to the full her failure in this regard is evident from the deeply interesting fact that she had planned, in retaining Belgium, to avoid the initial mistake made in her former conquest; and to deport all inhabitants, replacing them with "honest Germans."

Mr. Cerf's book treats concisely and clearly of the economic, social and political condition of Alsace-Lorraine under German rule, and it should be in the hands of every lover of freedom, of justice and of France.

PETER GUILDAY.

Catholic University of America.

Ireland and England: In the Past and at Present. By EDWARD RAYMOND TURNER. (New York: The Century Company. 1919. Pp. xii, 504.)

If Irish history had all been written in the spirit in which Professor Turner approaches the subject, there would now be no Irish question. The misfortune of Ireland is that her people have been nourished on a history of wrongs. They have fed on the poison of hatred, until they are no longer capable of seeing or hearing anything except Ireland, her wrongs and her grievances. In the earlier chapters of his little book, Professor Turner sets out plainly the many reasons that Irish history affords for this sense of wrong. He tells the story of the repeated but ineffectual conquests by England, and of all the misery and shame wrought upon the conquered people. But he never keeps his eyes so close to the picture of Ireland that he cannot see the background and the setting. He shows that the wrongs were not peculiar to the Irish, and not wantonly and wickedly inflicted by the English. They were incident to the general history of the times. The English people and the Scotch and Welsh all suffered similar wrongs—similar

in kind if not so intense; and the treatment meted out to the Irish was the treatment that conquerors gave everywhere to the conquered in those earlier and less humane days.

The first third of the volume tells the story up to the consummation of the union. In these chapters, Professor Turner deals with Ireland's ancient culture, the conquests of the English, Grattan's parliament and the union. The rest of the history is devoted to the nineteenth and twentieth century. Professor Turner makes no attempt to add anything new to what is already known of Irish history. His effort is for a new presentation of a familiar subject rather than the discovery and presentation of new evidence. But great care has been exercised to make his story accurate as well as readable. In one or two minor matters he seems to show a certain lack of familiarity with the British parliamentary system. In telling of O'Connell's appeal to the house of lords, he writes as though all the peers formed the highest court of the British Empire, instead of this court being formed only of the small group of "law lords" who sit in the upper house. He fails to give credit to Poynings for his effort to protect the Irish against the oppression of the Anglo-Irish parliament when he secured the passage of Poynings's Act. Exception might be taken to other of his statements; but it can hardly be expected that in a history so controversial as that of Ireland any author could satisfy all his critics, and the chief value of the book lies not in meticulous exactness of the statements it contains, but in the new point of view, which takes in not only Ireland and her history of wrongs, but all Europe and America as background for the events in Ireland. The book will not be welcomed by the extremists on either side of the controversy, but it ought to prove of the greatest possible value to the many who are anxious to see right done both to England and Ireland.

A. G. PORRITT.

Hartford, Conn.

Present Problems in Foreign Policy. By DAVID JAYNE HILL.
(New York: D. Appleton and Company. 1919. Pp. xii, 361.)

Uncertain expectations are aroused when a volume comes from a man who has been a university president, assistant secretary of state, American ambassador to foreign countries, a delegate to the Hague Peace Conference, a frequent lecturer before universities and bar asso-

ciations, and the author of a number of books which include *The Elements of Rhetoric*, *Impressions of the Kaiser*, and an admirable and scholarly *History of Diplomacy*. With two exceptions, the chapters of this book appeared in the *North American Review*; and one accurately describes their argument by saying that, although not in the style of, it would be approved by, the editor of that journal.

Mr. Hill condemns the League of Nations on the ground that "it is the work not of jurists building on solid foundations already laid, but of politicians holding a brief for particular interests or a personal theory." Little or nothing, however, is said to show that the pre-war international anarchy is better than an unsatisfactory, but possibly successful, international organization; yet this is a necessary premise to his thesis and in enumerating the faults of the proposed constitution, he by no means makes out a conclusive case against it.

In many respects, the author takes the line adopted by the Republicans in the senate, although what he writes necessarily shows more knowledge and thought. Fundamental principles precede and follow the most trivial objections. Nations are unequal; they have different ideals and there is no common form to govern their actions. In some respects, they are like business corporations and no uniformity is possible; economic sacrifices cannot be compelled for the benefit of others. A supergovernment should not be attempted for, although "sovereignty cannot in a juristic sense be longer regarded as strictly absolute" (p. 24), "the battle has been fought in the name of freedom. Let us remain free in the hour of victory." The same argument would have prevented the American Union or any other great federation which has helped reduce the possibilities of war.

At the same time, Mr. Hill says many things which will command cordial agreement. His most effective work, perhaps, is done in describing an unrepentant Germany and her trickery in changing governments. Following Mr. Root, the author makes a strong argument that the covenant is defective in its neglect of international law. Ambiguities in the draft are pointed out: does the league create a corporate entity and are the rights of neutrals and nonmember states clearly defined? A chapter on the treaty-making authority affords the interesting spectacle of a Republican quoting St. George and John Randolph Tucker. Mr. Hill suggests that the constitutional question may be serious: the treaty may be invalid because of the limitations it imposes upon the house of representatives. This suggestion has subsequently been dismissed as without merit by the senate judiciary committee.

In three concluding chapters, written while the peace was being negotiated, Mr. Hill argues the impropriety of the President's trip to Europe and the mistake of delaying the peace—was it really delayed?—to secure a League of Nations. It is suggested that a lasting peace is not so important as an ending to this war; indiscreet or ambiguous utterances in the President's speeches are considered ("The Debacle of Dogmatism"), and the league is linked up with our hesitancy in declaring war and a Wilsonian scheme to secure a compromise peace. Although Mr. Hill outlines what he conceives to be "The Challenge to the Senate," he does not attempt to answer it. He approves Mr. Root's reservations—all reservations in fact. Distinguished diplomat that Mr. Hill is, he nevertheless objects to votes in the assembly for the British Dominions, without a word concerning the fact that the assembly has no powers and that representation is therefore of no importance.

Historians of great crises and biographers of great men rely largely upon ephemeral pamphlets and journalists' impressions. Mr. Hill's volume will be of great service to the future historians and biographers of Mr. Wilson, some of whom, it is to be hoped, will endeavor to explain to their generations the very curious phenomenon—occurring in this book—of an attack on the league which comes from the Left and from the Right and is, in each case, strongly pressed by the same advocate.

LINDSAY ROGERS.

University of Virginia.

The Oriental Policy of the United States. By HENRY CHUNG.
(New York: Fleming H. Revell Company. 1919. Pp. 306.)

In this book the author, a Korean, is less concerned with a study of American policy in the Far East than he is with the conduct of Japan there, and his principal purpose seems to be to warn the United States against the peril of "the consolidation of Asia under Japanese domination." This accounts for the striking difference between what one would expect from the title and what one finds in the volume. The first part, of eighty-nine pages, deals with the development of the American policy. It is, naturally, quite inadequate. The author has found our policy "lax and indifferent" in the past, and as for the future he would have an Anglo-American alliance for the purpose of helping China against the Japanese peril. The second part, of sixty

pages, is entitled "An Undercurrent Shaping the Policy: Japan's Control of Publicity." Here are repeated many of the current charges against Japan and the Japanese. Mr. Chung's tribute to Japan's "marvellously complete and skillful control of publicity, a control that enables her to manipulate easily the public opinion of the Western Powers," seems exaggerated to one who has had to read some of the articles about Japan which have appeared in our newspapers and magazines during the past year. Finally, part three, contains a number of documents and several reprinted articles, primarily concerned with Japanese conduct and policy.

Mr. Chung has shown considerable literary ability in presenting his subject. In spite of his severe criticism of Japan his attitude is, on the whole, more restrained than one might expect. The work also presents an air of scholarship which is not justified upon further examination. The selected bibliography is a well-chosen one, and there are many references to authorities. But in addition to some positive errors in fact, which might be overlooked, the book is untrustworthy because of the frequent assertions which are unsupported, and because of the impartial way in which authorities, good, bad and indifferent, are cited, ranging from the late John W. Foster to the columns of the *Chicago Examiner*.

PAYSON J. TREAT.

Leland Stanford Junior University.

Judicial Settlement of Controversies between States of the American Union. Collected and edited by James Brown Scott. Two volumes. (New York: Oxford University Press. 1918. Pp. xlii, 873; 874-1775.)

These two massive volumes bring together material of great value to students of constitutional and international law alike. The Supreme Court of the United States, so far as its original jurisdiction over controversies among members of the Union is concerned, is in effect an international tribunal. It is a court in which the several states sue and are sued by one another. In the years intervening between 1799 and 1918 no fewer than eighty-odd controversies of this sort have come before the court for adjudication, and in the course of this experience a notable body of jurisprudence has been built up. "The essence, function and limits of judicial power have been noted and analyzed; the distinction between judicial power on the one hand, and

legislative and executive, or political power, on the other, has been made clear and the judicial settlement of justiciable disputes by a court has been justified by precept, demonstrated by practice, and vindicated by results."

The records of these cases form the text of Dr. Scott's volumes. In addition, the editor has added, by way of introduction, a selection of leading decisions which deal with the nature of the American Union and the status of the several states composing it. To each case the editor has prefixed a concise note indicating the gist of the controversy and the nature of the decision as well as the importance of the issue decided. Explanatory footnotes are also inserted where necessary.

It is appropriate that these volumes should be issued under the auspices of the Carnegie Foundation for International Peace, because the lesson of what forty-eight states of a new continent can do by eschewing all resort both to diplomacy and to force of arms is one that the nations of the world might well study. Many wars have had their inspiration in controversies far less exciting to the passions of men than those which our states have settled without a shot in anger. It is often urged that controversies which concern a nation's honor and dignity cannot be submitted to adjudication, arbitration or compromise; but it is difficult to find in these eighteen hundred pages any sign that the states of the American Union have suffered any impairment in honor or dignity at the hands of the learned justices in Washington. These two volumes form a noteworthy tribute to the American respect for the principle of juridical determination. They point to a great lesson which one hundred millions of people have mastered during the last century. Dr. Scott has rendered a most useful service in bringing this material into such form that men can readily lay their hands on it.

An Introduction to the Study of the Government of Modern States.

By W. F. WILLOUGHBY. (New York: The Century Company. 1919. Pp. xiv, 455.)

This is an interesting and instructive book, from several points of view. The author feels that the teaching of government in the United States places too much emphasis on mere description and too little on "fundamental political principles." To meet the need of a background of this sort, he sets forth "the problem of government as a problem" and shows "how the leading states of the world have in practice met it."

There can be no doubt of our need of just such a book. Contrast, for example, the usual textbook treatment of the "Bill of Rights" with Professor Willoughby's penetrating analysis, in which "Bills of Rights" appear as a part of the problem of the relation of the individual and the state. The theory of natural law is examined and exploded, and the English and American methods of protecting the individual rights are explained. His excellent chapters on "The Modification of Constitutions," on "The Distribution of Governmental Powers Territorially," and on "The Functions of Government" also illustrate the wonderful possibilities of his method.

But this attempt is little more than a beginning on the long trail that leads to an adequate political science. It rarely rises above the level of a reclassification of descriptive material. The author treats the problem of sovereignty in the all-too-familiar nineteenth century, legalistic fashion; he yields to the war-begotten temptation to treat German theories of the state as though Stein, Dahlmann, Gierke, Neumann, and Preuss had never existed; and he makes the startling statement that the reason for the failure of all first attempts to create popular assemblies lay in the failure of these bodies to distinguish between the "functions of a national assembly as an organ of public opinion and one of legislation."

The author's genius for classification leads him into the vice of over-classification, with its concomitants of confusion for the student and added difficulty for the teacher. Especially noticeable in this regard is the enumeration of five "departments of government" (legislative, judicial, executive, administrative, and electoral); the superfluous treatment of procedural rights; and the insistence on procedural technicalities as a cause of the failure of national assemblies.

On the whole, *The Government of Modern States* marks progress in the literature of political science. But a satisfactory treatise on the subject, embodying the results of European as well as American research in the fields of political psychology, history and economics, still remains unwritten.

Harvard University.

M. H. COCHRAN.

The Government of the United States. By W. B. MUNRO, Harvard University. (New York: The Macmillan Company. 1919. Pp. x, 648.)

Professor Munro's study of American government is both timely and fruitful. It is timely in view of the revival of citizen interest in

the fundamental principles of civil liberty, political organization and social progress. It is fruitful in that it begets optimism without diminishing concern. It gives genuine satisfaction in its use as a text. It has the added merit of compassing the subject within space that will attract a large circle of readers outside the class groups in which its freshness, clarity and discrimination are particularly welcome. The absence of a certain lightness of touch is compensated for by the forceful marshaling of data and a logical development of the subject matter that is one of the triumphs of the undertaking. The book is descriptive and analytical rather than interpretative. It bears witness to careful research and a comprehensive grasp of the principles, organization and workings of American government. There is wanting the philosophical breadth of Lord Bryce or the penetrating insight of Mr. Wilson, but there is sanity and wisdom in plenty within its pages.

One looks for a more adequate statement of the danger to representative government due to the growing incapacity of the Congress. The undergraduate can appreciate the importance of this problem, the forces which create it, and the necessity of restoring the deliberation, discussion and criticism of public measures to the place now usurped by the struggle for control of administration, personnel and detail. He can also understand that the latter practice is incompatible with the primary purpose for which the Congress exists, that when followed it not only unfits the legislative body for the proper performance of its principal function, but in the end compels it practically to abdicate that function. It would seem that the present university generation is entitled to a consideration of the problem of saving Congress from its own lust for power and patronage in administration.

One notices the same disposition in the treatment of the time honored principle of separation of powers. The student is left under the spell of the tradition that the founders accomplished their purpose in the establishment of such a separation. In truth, the interlocking of the powers of government is so extensive and important that the effort and usefulness of legislative and executive branches are seriously impaired. Without the ungrudging coöperation of the other, neither one can function properly and such coöperation is difficult to secure. It is important for students to know that not a real separation of powers but a distribution of both legislative and executive powers between separate organs functioning through different persons and often enough through different parties is what actually exists; also that under such conditions there can be no assurance of harmony or

agreement except as one organ establishes substantial dominance over the other, or a party boss lords it over both.

It is a matter of regret Professor Munro did not give larger space to state government. Three-fifths of the volume (388 pp.) is devoted to the national government including the chapter on English and colonial origins, while but 247 pages are devoted to state and local government, of which but 147 pages deal with state government. In this compression of the treatment relating to state government in favor of the national system the author follows the established textbook practice. The result is that the springs of political development, the laboratories of experimentation, the rich experiences, the substantial services and the important problems in the field of state government are not given the consideration they deserve. Not only does this impair the value of the book from the standpoint of balanced instruction in American government, but it operates to discount state government in the minds of the student and the general reader. Happily for teachers who wish to deal with this field more fully excellent supplementary text material is available.

For the purposes of the book the treatment of local government is adequate in proportion. Two chapters are devoted to rural and four to city government. The latter reflect the excellence of the author's former studies in the municipal field and constitute the best condensed treatment to be found in any one volume work dealing with the American system as a whole.

The typographical work and apparatus of the book are satisfactory. There are some errors, e.g., the use of the word *committees* for *countries* in describing the treasury department on page 133. Viewed as a whole, however, Professor Munro's book not only fulfills expectations of merit as regards content and make-up but is distinctly superior to any other now available for the teaching of American government.

RUSSELL M. STORY.

University of Illinois.

Government Organization in War Time and After. By W. F. WILLOUGHBY. (New York: D. Appleton and Company. 1919. Pp. 370.)

For years to come the action of the United States in meeting the many problems of administration that confronted it in the prosecution of the great war will furnish a wealth of material for the political scientist

and the economist, and all who are interested in public affairs. Much of this material lies buried in masses of unpublished papers and records. Much more has not yet been intrusted to paper and will become public property only when the principal figures in the war administration at Washington write their memoirs. This process has indeed already begun. But meanwhile some one must make a beginning in the study of the operation of the war administration, and no one is more fitted to do this than the director of the Institute for Government Research.

Mr. Willoughby conceives the task of war time administration as one primarily of mobilization. He surveys in turn the mobilization of science, of publicity agencies, of finance, of industry, of trade and transportation. He surveys also the mobilization of food, of fuel, and of labor. But he makes no mention of fighting men, nor of munitions and supplies, except for the work of the aircraft production board. In short he has left the war and navy departments completely out of his book, as well as the commission on training camp activities and the Red Cross. However, there is more than material enough for a book without them.

Dr. Keppel in a striking introduction to the volume observes that "it is more than a record and comment upon the happenings of the last two years. It is a valuable collection of state papers." Here the reader and teacher will find well-chosen extracts from the principal acts of Congress and executive orders, relating to war administration, and useful summaries of those not quoted.

In general the organization and powers of the various civilian war agencies are duly described, although some important activities are inadequately treated, such as the thrift campaign of the war savings committee and the work of Mr. Leonard Replogle, the steel administrator. The comparatively little critical comment is judicious. For the most part information was lacking, at the time this book was written, upon which the results accomplished by the various agencies could be justly appraised. In such a work errors in names and dates are inevitable. Those which have come to the reviewer's attention are trivial. The volume is a much needed introduction to the study of the administrative agencies created during the war and will be invaluable to all teachers of American government.

A. N. HOLCOMBE.

Harvard University.

Fighting the Spoilsmen. By WILLIAM DUDLEY FOULKE. (New York: G. P. Putnam's Sons. 1919. Pp. 336.)

Fighting the Spoilsmen is indeed an apt title, for the book is a series of picturesque paintings of battles against the corrupt use of patronage, in which Mr. Foulke led the attacks. Fifteen pages only are devoted to the earlier and somewhat educational movements for the merit system of appointment to public office. Mr. Foulke, too, is the one person to have written this book, for he has done more "fighting" for the cause than any other single civil service reformer, and as the text reveals, enjoys a fight for a righteous cause. The Biblical saying, "It is good to be zealously affected always in a good thing," is well exemplified in the thrilling stories he tells.

Mr. Foulke's first fight against spoilsmen began when he was an Indiana state senator. He had to begin his fight without official authority, but with the aid of two prominent citizens, forming a committee of the Indiana Civil Service Reform Association, wonders were accomplished.

The committee first investigated the Indiana state hospital for the insane. Though unwelcome visitors, they unearthed a mass of testimony showing gross cruelty to the insane, who were "struck with the fist, shaken, knocked, dragged by the neck, and teased." Graft in purchasing supplies was brought to light. Appointments were made for political and personal reasons, with occasional clean sweeps as party factions came and went. Assessments were levied on the employees for campaign purposes. Crude attempts were made to hide evidence, but the committee persisted so vigorously that they found for example, "butter, infested with maggots, concealed in the sewer beneath the store-room to avoid inspection." The cohesive power of political plunder was such that it took thirteen years of constant "fighting" to clean out these Augean stables.

The rest of the book consists of accounts of removals under secret charges in President Cleveland's first administration; six reports of a committee of which Mr. Foulke was chairman, appointed by the National Civil Service Reform League during the administration of President Harrison, with a frank statement of Postmaster-General Wanamaker's insincerity; criticism of Cleveland's second administration, especially the rewarding of large contributors to the campaign fund with diplomatic appointments; the clean sweep of consuls under Josiah Quincy, assistant secretary of state. Praise for the good that

Cleveland did is not omitted. There is a chapter on superannuation and its remedies; and then follows another series of reports of the league's committee on President McKinley's civil service measures, with a just and subtle characterization of this amiable president; an appreciative account of Roosevelt's up-building, extension and strengthening of the merit system in his administration; and a history of the reform under Taft and Wilson.

Almost every phase of abuse of public patronage and improvements made by the merit system since Mr. Foulke's first fight in 1883 are vividly told in this book. He also gives an account of the enlarged program of the National Civil Service Reform League for getting rid of supernumeraries and the incapables, securing higher officials by competition of careers as opposed to competition of knowledge, and bringing efficiency into the departments. As a criticism it might be said more emphasis is laid on the somewhat ephemeral fights against individual spoilsmen, than on more permanent constructive legislation.

RICHARD H. DANA.

Cambridge, Mass.

Organized Efforts for the Improvement of Methods of Administration in the United States. By G. A. WEBER. (New York: D. Appleton and Company. 1919. Pp. xv, 391.)

This is one of a series of studies in administration published by the Institute for Government Research. The work is divided into three parts: Part I deals with agencies for research in government, national, state, and municipal, both official and unofficial. After the description of the work of each agency is given a list of its publications and also reference to descriptive articles. Part II contains an account of the work of state and city organs of central administrative control; while part III deals in a similar way with legislative reference and bill-drafting bureaus. Altogether, about one hundred different agencies are listed and described. There is a preface and introduction by the editor of the series, Mr. W. F. Willoughby.

It would be very difficult for any one person to have any real familiarity with the work of so many different agencies, and therefore much of the book is composed of summaries of reports or extracts from descriptive articles. The account given of the work and recommendations of the consolidation commission of Oregon (pp. 159-160) consists of a two-page verbatim reproduction of a portion of an article

in the *American Year Book for 1918* (pp. 235-236), with no acknowledgment nor quotation marks. One result of this has been to lead the compiler into the error of supposing that the language thus borrowed describes the recommendations of the commission, whereas, in large part, it describes recommendations of the expert attached to the commission, which were not adopted by the commission nor printed in its report. Further, although a quotation is given from the report of the commission, no publications of the commission are listed, as in the case of the other state agencies.

On page 142 it is stated that the recommendations of the Illinois Efficiency and Economy Committee were "for the most part accepted and acted upon by the next General Assembly." In fact, the next general assembly, that of 1915, did practically nothing toward adopting the recommendations of the committee. Under the head of "articles," describing the work of efficiency and economy commissions, the compiler lists an account in the appendix to the report of the Illinois committee, but makes no mention of other more recent and at least as authoritative accounts, such as that by Raymond Moley in No. 90 of *Municipal Research*, though the latter publication is listed on page 188 (the author's name being misspelt "Maley"). A useful index is added, but the method of its compilation appears somewhat erratic. Thus, the names of some persons mentioned in the text are listed, while others are not, and the names of some authors of publications are listed, while others are not. In spite of these minor defects, however, the work is one of real value and usefulness, and no one can afford to be without it who is interested in the movement for more efficient and economical administration.

J. M. MATHEWS.

University of Illinois.

County Administration: A Study Based upon a Survey of County Government in the State of Delaware. By CHESTER C. MAXEY, Supervisor of Training School for Public Service. (New York: The Macmillan Company. 1919. Pp. xxi, 203.)

The subject of local administration has not received, from writers in the field of American political science, the attention which its importance deserves. Realizing the great demand for more first-hand knowledge in the subject, the New York Bureau of Municipal Research has begun the publication of a series of "Studies in Administration." The book under review is the first of the series. Giving first place in

the series to county administration was not an unwise choice, since the county is still our most neglected unit of government.

The purpose of this study and of other studies to follow, as stated in the introduction by Professor Beard, is to contribute first-hand information or "source material for the science of administration that is in the making." As to method: laws, charters and government reports play little part; the all-important source of information is "first-hand observations of institutions at work."

The basis of Mr. Maxey's study is a survey of the three counties of Delaware. The survey embraces their structure and organization, their financial procedure and business problems, and the administration of their alms-houses, jails, work-houses, and highways. The city-county relations of the city of Wilmington and the county of New Castle are also examined.

The "first-hand information" resulting from the survey, however, comprises not more than one half of the book. At least one half the space is given to the author's proposed changes in organization, financial and business procedure, etc. In fact, the reviewer was impressed not so much with the "source material" furnished by the survey, as by the author's clear and vigorous presentation of the advantages of the "manager" form of county government and the convincing reasons for the adoption of the business principles and methods championed by the New York Bureau of Municipal Research.

A less complete escape from the "bondage to legalistic traditions" and a thorough examination of the "laws, charters and government reports," in addition to the (at times confessed—see pp. 69, 138) hasty visit to the office of the official, or to the institution, under investigation would have enhanced the value of the study as a contribution to the science of administration.

The excellent classified bibliography will be greatly appreciated by all students of county administration.

ORREN CHALMER HORMELL.

Bowdoin College.

The American Municipal Executive. By RUSSELL McCULLOCH STORY, Ph.D. (University of Illinois, Studies in the Social Sciences. 1918. Pp. 231.)

In his study of *The American Municipal Executive* Dr. Story has performed a task which all interested in municipal government have

wanted some one to undertake for these many years. While much has been written of the accomplishments of individual mayors who have stood out prominently as leaders of reform movements, few efforts have been made to trace the political development of the office from the time when our cities were small and insignificant, to the present, when they constitute more than one third of our entire population.

Dr. Story's task has been well done. He has not only written a thoroughly readable monograph, but he has been unusually accurate in his statement of facts and his interpretation of political movements. He has taken a subject, which when analyzed in detail, as he has done it, is difficult to present in an interesting and, at the same time, complete and authoritative manner. He has accomplished both. Not that the office of mayor in our American cities is prosy or surrounded with an atmosphere of dreary routine. Far from it. The office of mayor has called forth more popular attention than any other elective offices except those of President and governor. But an analysis of charter provisions governing the qualifications for the office, methods of election, length of term, powers of appointment, legislative and judicial functions and the numerous other legal requirements governing and controlling the mayor, do not lend themselves easily to readable and interesting treatment. The author of this monograph has, however, succeeded in handling these details in such a way as to avoid making the volume a dreary technical analysis of dry-as-dust details, and has made it a scholarly, accurate and authoritative study of a public office which has come to be recognized as one of the foremost in the gifts of the people.

As a test of the accuracy of the author's statements of facts and his interpretation of political events, the reviewer has applied his own personal and rather intimate knowledge of Cleveland municipal affairs to the writer's statements concerning the Cleveland city charter and the administration of such mayors as Tom L. Johnson, Newton D. Baker, and Harry L. Davis. In every instance he has found both the statements of facts and the interpretation of events to be eminently correct.

Unfortunately, the introductory chapter seems to be lacking in the same carefulness of statement which characterizes the volume as a whole. The assertions about the decline of the city council as a coördinate branch of municipal government and the statement that the council has made "its last stand" in Chicago, that councils and commissions are only "passively tolerated" and that it may develop into

"a sort of electoral body to choose the mayor," are hardly justified by the history of the municipal legislatures and the importance of local representation in determining municipal policies. The municipal legislature in American cities has not, it is true, grown in strength as has the executive; yet it is, and will continue to be, a coördinate branch of government representing the local opinion and interests and determining broad general policies. Even in the city manager form of government, which many feel is the most extreme development of administrative control, the council or commission is still an important factor in determining policies. The council has, of course, been supplemented by the initiative and referendum in many cities, but this has been quite as much a check on the mayor as it has been on the council.

The omission, on many pages, of footnotes giving sources of the frequent quotations is somewhat disconcerting; and the complete absence of a bibliography of sources at the close of the treatise subtracts somewhat from the authoritativeness of the study.

Dr. Story's keen analysis of the advantages and disadvantages of the method of choosing the mayor by popular election shows that he has studied the office of the American executive not only from the theoretical but also from the practical point of view. As he points out, the undeniably weakest point in the elective mayor plan is the necessity of participating actively in partisan politics to the detriment of administrative efficiency; yet this weakness has its compensating advantages in the powerful influence which a real mayor exerts in the development of a sound public opinion. Mayor Jones of Toledo in his campaign and in his service as mayor, "compelled a discussion of fundamental principles of government." So did Tom L. Johnson in Cleveland, Mayor Rudolph Blankenberg in Philadelphia, and Mayor Pingree of Detroit. No other method of selecting the chief executive of a city gives the same opportunity for this valuable and important contribution to the political life of a community.

This distinct advantage in the elective mayor plan, no doubt, accounts for the rather lukewarm and conservative manner in which the author has treated the city manager plan. He is not nearly so enthusiastic in its praises as are many who are its advocates. He may be right in prophesying that the city manager will not supersede, at least in the near future, the elective mayor; and prevailing public opinion may also be right in its insistence upon popular government before it clamors for efficient government.

Dr. Story takes the same optimistic view of the future of city government which most men take who have given the subject serious study. He sees a growing improvement in the personnel of the candidates elected to the office of mayor, increasing nonpartisanship in the administration of local affairs, and a distinct advance in the independence of the electorate in selection of the chief executive of the city.

The monograph of Dr. Story is a distinct contribution and a valuable addition to the growing literature on the government of cities.

MAYO FESLER.

Brooklyn, N. Y.

History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States. By TSO-SHUEN CHANG, Ph.D. (University of Iowa Studies in the Social Sciences, Volume 6. 1918. Pp. 290.)

The author of this monograph sets out "to trace the origin and development of the commission plan and the city manager plan," "to explain, through a detailed analysis of statutes and charters, the structure of municipal government under the new régime," and "to discover the extent to which the alleged advantages of the new plans have been sustained in actual experience." The first and second of these main objectives have been compassed with marked success; the third has not been attained with the same degree of success, partly because the task is a much more difficult one, but principally for the reason that it is not possible to assess the results of actual experience by using only printed sources of information.

Dr. Chang has worked over the published material on the subject with remarkable pains and thoroughness. Little that has ever been written on the commission and city manager type of municipal government has been overlooked. Facts and information garnered from every source are ingeniously woven into a readable and useful work, a veritable encyclopedia of the subject. Practically every city or town, large or small, that has had any experience with commission or manager is given space for at least the principal historical facts and a mention of any peculiarity of structure or experience. It would be difficult, indeed, to imagine any fact omitted which anybody is likely to need.

Footnotes citing the sources of the numerous direct quotations and the authority for nearly every statement made are collected at the end

of the volume. Altogether, 676 such notes are required for 242 pages of text—exceedingly well “documented” even for a doctoral dissertation. Like the seven chapters preceding it, the one devoted to “Summary and Conclusions” is a well-planned digest of the literature. It is not the conclusions of Dr. Chang, except by inference, but what others think about the commission government and city managers that we get. Wilcox, Munro, Dillon, McBain and many other authorities are marshaled in support of a qualified approval of commission and manager plans.

C. C. WILLIAMSON.

New York Public Library.

City Manager in Dayton. By C. E. RIGHTOR, and others. (New York: The Macmillan Company. 1919. Pp. 271.)

Dayton has been the object of numberless junkets, questionnaires and conversations by those interested in the results of city manager government. This is a justifiable interest since Dayton was practically the first and largest city to try this new fangled device for getting good government. That trial was held under many adverse conditions—hostility by a considerable part of the population, a highly developed bi-partisan political machine, still entrenched in the school board and county and anxious to assist in and witness a failure, and a foundation of corruption and inefficiency upon which to build honesty and effectiveness. If the city manager plan could succeed in Dayton, it should succeed in any city of similar size in America.

Mr. Rightor has measured that success, not in generalities or repeated theorems, but in facts. As director of the Dayton Bureau of Research, he and his collaborators had facts of what happened before and after January 1, 1914 (the beginning of the experiment), available to no others either in or out of the government. This group was neither a friend nor an enemy of the plan, except as it produced or did not produce results. It is particularly happy that the group should have realized its obligation to measure results, not alone for the student, but also for the inquiring citizen, and both can find in this book more answers to questions, and more questions not usually thought of, than would have materialized from a dozen casual investigations.

After citing the origin of the city manager plan and the organized efforts to inaugurate it in Dayton, the authors discuss every city activity, comparing results during the three years prior to and during

the four years under the new plan. These results are in detailed figures, illustrated with frequent diagrams and always summarized in non-technical language for the citizen at large.

The effect is a strong defense of city manager government, but criticisms are included, mistakes are indicated and opportunities for improvement suggested. Perhaps there might have been more of the latter, but the preface states "it is not concerned with the theories of government . . . contained in this or other forms of municipal management."

The book is the first real appraisal of the earliest practical experiment with a city manager, and it is able, honest and interesting. It serves also as a merited recognition of the large part taken by Mr. John H. Patterson in fighting the fight for effective city government in Dayton and in the United States, and by Colonel Henry M. Waite, the first manager, whose courage, integrity and ability defeated vigorous efforts to destroy the beginnings of the city manager movement—a program that now offers many benefits at least to moderate-sized cities.

LENT D. UPSON.

Detroit Bureau of Governmental Research.

What of the City? America's Greatest Issue—City Planning. What it is and How to go about it to Achieve Success. By WALTER D. MOODY. (Chicago: A. C. McClurg and Company. 1919. Pp. 441.)

Walter D. Moody's new book *What of the City?* is a much needed contribution to city planning literature. The author states the aim of the volume as twofold: First, to provide, through the accomplishments and experience of Chicago, inspiration and guidance for the professional city planner; and second, to spur to action the citizens of other municipalities.

While the book tells mainly the story of the Chicago plan, and at times in somewhat exaggerated terms, it will be directly helpful to any city in showing both the authorities and the citizens how to go about city planning and how to achieve success. Chicago is virtually the only large American city that has taken the planning of the whole city seriously. Chicago's methods have been more logical, more persistent, and more systematic than those of any other city. The story is convincingly presented in Mr. Moody's book. Especially valuable are the chapters dealing with city planning as a new profession,

and with publicity, or the making of sound public opinion, which is perhaps the most neglected phase today of many otherwise comprehensive city planning programs.

Some of the main facts which Mr. Moody records in the effort of Chicago to "put across" its city plan are as follows: (1) A report on *The Plan of Chicago*, costing \$85,000; (2) a popular booklet on the same subject, of which 165,000 copies were distributed; (3) a notable pamphlet entitled *Fifty Millions for Nothing*; (4) the active coöperation of the clergy, secured and directed through the publication by the City Plan Commission of "Seed Thoughts for Sermons;" (5) the official adoption of Wacker's *Manual of the Plan of Chicago* as a textbook for the Chicago public schools; (6) a popular illustrated lecture on "The Plan of Chicago," reaching directly 175,000 people; (7) a two reel moving picture feature entitled "A Tale of One City;" (8) the local newspapers—publishers, editors, reporters, feature writers, and cartoonists—all coöperating intelligently and generously to carry to the people the far-reaching benefits contained in Chicago's plan.

The book is particularly timely in these days of reconstruction, days in which civic building should be inaugurated, but in which little can be accomplished unless deep-rooted in democratic methods.

The illustrations are numerous, the best being those dealing with Chicago.

JOHN NOLEN.

Cambridge, Mass.

MINOR NOTICES

Students of Canadian affairs, both past and present, will be greatly interested in Sir John Willison's *Reminiscences* which have been published in an attractive volume by Messrs. McClelland and Stewart (Toronto, pp. 351). The author is a veteran journalist who has had, during the past forty years, an intimate knowledge of public men and events in his own country. He has enjoyed the confidence of prime ministers, parliamentarians, and politicians. But that is not all. To this intimacy of knowledge he joins a firm grasp of government as a science, and he writes with a practiced hand. The result is a book of uncommon value and genuine interest. It is replete with shrewd observations, judicious comments on a multitude of things, and an unusual array of good stories. Unlike many books of its general type, moreover, this one is wholly free from malice; its author appears to bear no ill will towards any man, living or dead. On the other hand

the book fails in many points to satisfy the natural curiosity which its various chapters arouse in the reader's mind. It brings a good many narratives to the boiling point, and then drenches the fire by an intimation that the sequel to the whole story is confidential. Presumably Sir John Williston's book goes as far in its revelations as the proprieties allow. At any rate it is a thoroughly readable volume and a real contribution to the literature of Canadian political history.

Theodore Roosevelt's *Average Americans* (G. P. Putnam's Sons, pp. 252) is a chronicle of this young officer's experiences with the A. E. F. in France. The narrative is of the gossipy sort and characteristically Rooseveltian throughout, which means that it is forceful in its opinions and displays no patience with mollicoddle methods anywhere. Lieut. Col. Roosevelt saw a good deal of America's share in the fighting, and he describes it with much greater vividness than might be expected from a writer of slight literary experience. The author's eye for the things worth telling is remarkably keen; his style is direct, energetic, and even combative. Col. Roosevelt's knowledge of the American constitution needs polishing up, however. He tells us in two places (pp. 37, 66), for example, that this document "forbids billeting," which it certainly does not. He also vouchsafes the opinion that "France has no genius for politics" (p. 39), which is a generalization that men better versed in the science of comparative government would hesitate to make. On the whole, however, one can read this book with high expectations and not be disappointed.

Social Purpose, by H. J. W. Hetherington and J. H. Muirhead (N. Y., The Macmillan Co.), is "a contribution to the philosophy of civic society." Various chapters deal with such topics as "Citizenship and Personality," "Neighborhood," "The Industrial System" and "The State." Much of the discussion is sternly and severely abstract, but the authors feel that every serious consideration of social or political questions must rest upon a coherent philosophical conception of the nature of civic society. They render a considerable service, accordingly, by pointing out that much of what passes as "social philosophy" nowadays is fundamentally hollow and untrue.

A sixth edition of J. Ellis Barker's *Modern Germany* has been issued by Messrs. E. P. Dutton and Company. The volume has been considerably rewritten and greatly enlarged so that it is almost a new

book. Mr. Barker, it will be remembered, devoted five editions of this well-known work to the courageous task of pointing out the probability and danger of a German attack on civilization. Twelve years ago the author warned Englishmen that they would have to fight for their existence as soon as the enlargement of the Kiel Canal was finished. The outbreak of the war came, as a matter of fact, only a few weeks after this work had been completed. He also predicted, long before the war began, that it would end with a revolution in Germany and the fall of the Hohenzollern dynasty. In these days Mr. Barker was regarded as an alarmist, but the rapid march of events has proved him to be a pretty fair prophet, as prophets go. He is also a good writer, marshaling his facts with considerable skill and weaving them together into an interesting narrative. But the price which the publishers have set upon Mr. Barker's volume, good book that it is, seems out of all reason.

Professor Morris Jastrow, Jr., of the University of Pennsylvania, has added to his various well-known studies of conditions in the Near East, a volume entitled *Zionism and the Future of Palestine* (The Macmillan Co., 1919, pp. xix, 159). The book deals with the beginnings of Zionism, with its various present-day aspects, and with the place of the Jewish question in world politics. There is a very interesting chapter on "Palestine of Today."

Under the title *Parliament and the Taxpayer* (London, Skeffington and Son, Ltd., pp. xviii, 256), Mr. E. H. Davenport discusses the history of the English budget system and explains the way in which Parliament now controls the national expenditures. The historical survey is admirably concise, although it leaves none of the important points neglected. Present-day methods are outlined very clearly. A chapter on "Ideal control" gives the author's suggestion as to improvements. A good bibliography, particularly of parliamentary papers bearing on the subject, is appended.

Americanized Socialism, by James Mackaye (Boni and Liveright, 1918, pp. 191), expounds the program of socialism as applied to American conditions. The author rests his case on the philosophy of utility, and explains that if socialism cannot be justified in this country on the score of usefulness it cannot be justified at all. The chapter on "How to Combine Democracy with Efficiency" is one that will interest

every student of political science, although not all will agree with the author in so easily sweeping away the practical difficulties. Unlike most books on the subject of socialization, however, this volume faces the concrete problems and for this reason it is of more than ordinary interest to the man of affairs.

The Carnegie Foundation for the Advancement of Teaching is sponsor for an illuminating study which Mr. Reginald Heber Smith of Boston has prepared and published under the title of *Justice and the Poor* (Bulletin No. 13, pp. 271). The study is an excellent piece of work in every way and of great interest to the student of legal procedure. The president of the foundation, in his introduction speaks of it as one of a "series of studies of legal education and cognate matters" which this organization is to publish. But Mr. Smith's volume, admirable as it is in the discussion of such things as defects in the present administration of justice and methods of remedying them, has little or nothing to do with teaching or the problems of teaching, whether in law schools or elsewhere. It indicates that the Carnegie Foundation has a very liberal idea of the term "cognate matters" as applied to its own designated field of activity.

A volume entitled *Religion and Culture*, by Dr. Frederick Schleiter, has been issued by the Columbia University Press. It is a critical survey of the methods of approach to certain social phenomena which are religious in character.

A study of *The Hayes-Conkling Controversy, 1877-1879*, by Venila Lovina Shores (pp. 279) forms the fourth number in the Smith College Studies in History for 1919.

The Russell Sage Foundation has recently published under the title *American Marriage Laws* (pp. 132) a digest of legislation relating to marriage in the several states.

The Naval War College has issued a volume of documents bearing on neutrality and the breaking of diplomatic relations during the war. It bears the general title *International Law Documents* (Government Printing Office, 1918, pp. 295) and is well annotated, besides having a good index.

Those who desire to read a review of conditions in Austria, Hungary, Poland and Germany by one who does not fail to conceal his general sympathy with soviet doctrines will find what they want in H. N. Brailsford's *Across the Blockade* (N. Y., Harcourt, Brace and Howe, 1919, pp. 174).

Education and Autocracy in Russia by Daniel Bell Leary (pp. 127), is the first issue of the new University of Buffalo Studies.

Many well-known Englishmen have collaborated in writing the various chapters which appear in *Labour and Capital after the War*, edited by S. J. Chapman (London, John Murray, pp. 280). The volume deals with English conditions and problems exclusively.

Recent publications by the Carnegie Endowment for International Peace include *The Early Economic Effects of the War upon Canada*, by Adam Shortt, and *The Early Effects of the European War upon the Finance, Commerce and Industry of Chile*, by Professor L. S. Rowe. These two studies are bound in one volume. Another volume includes a study of the *Economic Effects of the War upon Women and Children in Great Britain*, by Irene Osgood Andrews. Closely related to this is Professor Benjamin H. Hibbard's volume on the *Effects of the Great War upon Agriculture*. Two larger volumes deal respectively with the *Direct and Indirect Costs of the Great War* and with the problem of *Disabled Soldiers and Sailors*. The former study was prepared by Professor Ernest L. Bogart of the University of Illinois; the latter by Professor E. T. Devine of Columbia.

The Century Company has brought out a volume on *Self-Government in the Philippines* (pp. 210) by Maximo M. Kalaw of the department of political science in the University of the Philippines. The book gives a concise and up-to-date survey of insular government, including financial administration.

A small volume on *Government Ownership of Public Utilities in the United States*, by Leon Cammen, is to be had from Messrs. McDevitt-Wilson, 30 Church St., New York.

RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

BEATRICE OWENS ASHTON and CLARENCE A. BERDAHL

AMERICAN GOVERNMENT AND PUBLIC LAW

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- Beveridge, Albert J.* The life of John Marshall. Vols. III and IV. Boston, Houghton Mifflin Co.
- Black, Henry Campbell.* The relation of the executive power to legislation. Princeton, N. J., Princeton Univ. Press.
- Coolidge, Calvin.* Have faith in Massachusetts; a collection of speeches and messages. Pp. 9 + 224. Boston, Houghton Mifflin Co.
- Fox, Dixon Ryan.* The decline of aristocracy in the politics of New York. Pp. 13 + 460. N. Y., Longmans, Green Co. (Columbia Univ. Studies in Hist., Econ. and Pub. Law).
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- Minor, James F.* Workmen's compensation laws of Virginia and West Virginia. Pp. xci + 691. Charlottesville, Va., Michie Co.
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- Owen, Robert Latham.* The federal reserve act. Pp. 107. N. Y., Century Co.
- Program of railroad legislation. Pp. 96. Washington, National Transportation Conference, Richard Waterman, Sec., Mills Bldg.
- Rhodes, James Ford.* History of the United States from Hayes to McKinley, 1887-1896. Pp. 13 + 484. N. Y., Macmillan.
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Articles

Admiralty Courts. Is every county court in the United States a court of admiralty? *Frederic Cunningham.* Am. Law Rev. Sept.-Oct., 1919.

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———. Military justice. *S. T. Ansell.* Cornell Law Quar. Nov., 1919.

———. Due process of law in the military establishment. *John Leland Mechem.* Central Law Jour. Dec. 12, 1919.

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